

ORIGINAL

SUPERIOR COURT  
YAVAPAI COUNTY, ARIZONA

2010 JAN 13 AM 11:00

JEANNE HICKS, CLERK

BY: S Smisko ✓

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF YAVAPAI

THE STATE OF ARIZONA,

Plaintiff,

vs.

STEVEN CARROLL DEMOCKER,

Defendant.

P1300

No. CR 2008-1339

BEFORE: THE HONORABLE THOMAS B. LINDBERG  
JUDGE OF THE SUPERIOR COURT  
DIVISION SIX  
YAVAPAI COUNTY, ARIZONA

PRESCOTT, ARIZONA  
THURSDAY, NOVEMBER 19, 2009  
9:17 A.M.

REPORTER'S TRANSCRIPT OF PROCEEDINGS  
CHRONIS HEARING

TESTIMONY OF GREG CURRY

ROXANNE E. TARN, CR  
Certified Court Reporter  
Certificate No. 50808

NOVEMBER 19, 2009  
9:17 A.M.

CHRONIS HEARING

APPEARANCES:

FOR THE STATE: MR. JOE BUTNER.

FOR THE DEFENDANT: MR. JOHN SEARS, MR. LARRY  
HAMMOND, AND MS. ANN CHAPMAN.

THE COURT: Absent any other things that have  
transpired in the meantime, we were going to resume the  
Chronis hearing. This is State versus DeMocker, of course,  
CR 2008-1339. Mr. Sears and Mr. Hammond, Ms. Chapman for the  
defense, Mr. Butner for the State.

MR. HAMMOND: Good morning, Your Honor. I  
think this is the time that we had agreed that the defense  
would call Mr. Greg Curry, and he is here with us this  
morning. I will ask him to come forward this morning.

THE COURT: Please.

THE CLERK: You do solemnly swear upon the  
penalty of perjury that the testimony you are about to give  
will be the truth, the whole truth, and nothing but the  
truth, so help you God?

THE WITNESS: Yes.

THE COURT: When he is ready, you may proceed.

MR. HAMMOND: Let him wet his whistle before  
we start.

1 GREG CURRY,  
2 called as a witness, having been duly sworn, testified as  
3 follows:

4 DIRECT EXAMINATION

5 BY MR. HAMMOND:

6 Q. Mr. Curry, would you please state your full name  
7 here for the record.

8 A. Greg Curry.

9 Q. What is your professional occupation?

10 A. I am a certified public accountant, and what I do  
11 mostly -- the work that I do centers on performing forensic  
12 accounting and financial investigations, many times related  
13 to legal disputes such as this matter.

14 Q. We will come back to that in just a moment.

15 Do you have a degree in accounting?

16 A. No, I don't have a degree in accounting.

17 Q. What is your undergraduate degree in?

18 A. I have a Bachelor of Science degree from Purdue  
19 University.

20 Q. After you graduated from Purdue, did you become a  
21 certified accountant?

22 A. Well, I sat for the CPA exam and passed it. I  
23 took a lot of courses in college in accounting, so I  
24 qualified to sit for the exam, so I sat for it and passed it.

25 THE COURT: Out of curiosity, what is your

1 degree in?

2 THE WITNESS: It's in computer science.

3 THE COURT: Thank you. Go ahead.

4 MR. HAMMOND: I had some doubt about his  
5 credentials myself, Your Honor.

6 Q. For about how long, Mr. Curry, have you been doing  
7 the kind of work that you described?

8 A. Over 28 years.

9 Q. In that period of time, in the forensic accounting  
10 field -- and I want to come back and ask you what that term  
11 means -- but just so we have that frame of reference of your  
12 experience here, do you have any idea how many different  
13 forensic accounting related matters that you have been  
14 engaged in?

15 A. Probably well over 500.

16 Q. And that is spread over a more than 25-year career  
17 in this business?

18 A. Yes.

19 Q. By whom are you currently employed?

20 A. I'm employed by a firm called Navigant Consulting.

21 Q. I don't know that I've asked you this recently,  
22 but can you just tell us a word or two about Navigant so we  
23 know what its organizational structure is and what your role  
24 is in the company?

25 A. Well, Navigant Consulting is an international

1 consulting firm. It employs over 2,000 professionals  
2 throughout the United States and in foreign countries.

3 Navigant performs a variety of consulting  
4 assignments, including financial investigation work. We do a  
5 lot of work with utilities and the health care industry.  
6 Things like that. So it is a very broad-structured  
7 consulting firm. It is publicly traded, so it is very large.

8 And my role is I'm a managing director,  
9 which means I am one of the more senior professionals in the  
10 firm.

11 Q. And you are managing director in the Navigant  
12 office in Phoenix, Arizona?

13 A. That's correct.

14 Q. Do you have other credentials related to your  
15 professional work?

16 A. Yes. I've been credentialed by the American  
17 Institute of Certified Public Accountants in the area of  
18 business evaluation and in the area of financial forensic  
19 work.

20 Q. Are you a member of any organizations related  
21 specifically to the kinds of issues that we might say  
22 surround forensic work -- forensic accounting?

23 A. Yes, I am.

24 Q. What would those be, please?

25 A. I'm a member of the National Association of

1 Forensic Economists. I'm also a member of the Association of  
2 Certified Fraud Examiners.

3 Q. Let's pause for a moment. We have used in these  
4 proceedings the phrase "forensic accounting," and we used it  
5 here in the last minute or two.

6 Can you just define for the Court what  
7 the concept of "forensic accounting" is or what the typical  
8 definition is of someone who is a forensic accountant.

9 A. Forensic accounting is a specialized field of  
10 practice that typically CPAs can perform where they apply  
11 their skills and training and experience to perform a variety  
12 of different types of analyses that are typically used and  
13 presented in a court of law.

14 Q. Can you just give us -- and I would like to make  
15 this relatively brief because we have a lot of other things  
16 that we want to do this morning -- but can you just give us  
17 an example or two of the kinds of forensic accounting matters  
18 or cases in which you have been involved?

19 A. Sure. I can probably give you as many as you  
20 want, but do you want just a couple?

21 Q. Let's just take a couple, and there are several  
22 you have told me about, but why don't you take a couple that  
23 you think might be good examples of what in your career a  
24 forensic accountant typically is called on to do.

25 A. All right. For example, there is a large Ponzi

1 scheme case that's in Maricopa County which is involving  
2 investors investing money into a company that then use that  
3 money to loan to other companies as investments. The  
4 interest rates on the loans that the investors were  
5 supposedly going to receive is 20 to 25 percent. So it sort  
6 of had the earmarks of something that was suspicious.

7           The investors ended up losing a lot of  
8 their money, and I was hired by one of the particular  
9 defendants that was targeted by the receiver that was  
10 handling the litigation and the prosecution of the Ponzi  
11 fraud analysis to investigate whether there was really  
12 evidentiary support for their claims against the particular  
13 defendant. So I had to analyze all of the investors' monies,  
14 their investments into these particular operations, whether  
15 the businesses in which the monies flowed were legitimate  
16 business, was there a legitimate reason for why those  
17 investments were made or not. So it involved a lot of that  
18 kind of forensic evaluation and investigation of the records  
19 related to the claims being made by the receiver in that  
20 case. That is one example.

21           Another example is I have been retained  
22 by an automobile dealership in which they are asserting that  
23 a manager of that dealership was using the dealership's  
24 resources for personal use. So for example, he was taking  
25 some of the body shop people and some of the service

1 employees of the automobile dealership to do work on his own  
2 vehicle. So basically, that is an embezzlement-type claim  
3 against that particular manager.

4 Q. You have been involved, I believe, in other kinds  
5 of what we might consider as criminal-law related matters. I  
6 think other embezzlement cases, for instance.

7 A. Yes.

8 Q. Can you give us another example of the kind of  
9 case that might trench into the criminal law areas of  
10 violations of public law?

11 A. Well, I have certainly been involved in numerous  
12 embezzlement cases. One in particular, where a CFO basically  
13 was embezzling monies from the company through falsification  
14 of financial records, especially with respect to their  
15 accounts receivable, taking money that came in to pay down  
16 those receivables, and manipulating the financial documents  
17 and the financial statements to enable him to hide and  
18 conceal his activity and get away with millions of dollars.  
19 So there was a lot of work involved in evaluating that,  
20 quantifying the amount of the embezzlement, and basically  
21 establishing, through the financial records, that -- the  
22 trail to show how the fraud was done.

23 Q. Have there been cases in which you have been  
24 appointed by courts to provide forensic services?

25 A. Oh, yes. Numerous times.



1           Q.     Can you give us an idea, just generally, under  
2 what circumstances would you, as a forensic accounting  
3 expert, be appointed by a court?

4           A.     Well, I have been appointed numerous times by  
5 Superior Court to act as a special master and also act as a  
6 receiver.

7                         I have also been appointed by the federal  
8 courts to act as Chapter 11 bankruptcy trustee and Chapter 11  
9 bankruptcy examiner. In the special master work, typically  
10 what happens there is what the Court will do is ask me to  
11 perform a particular assignment. The Court will be  
12 interested in looking at some issue with respect to a dispute  
13 between parties. It may be, for example, a partnership  
14 dispute, where the partners of a business can't get along or  
15 they have disputes with respect to how much the business is  
16 worth, who owes what, how much capital they have in the  
17 business. And the Court asks me to come in and as a  
18 neutral -- effectively a neutral party, basically do an  
19 examination investigation and answer the questions that the  
20 Court wants to have answered.

21           Q.     Some of those, I take it, are cases in which  
22 possibly a debtor, who is either in bankruptcy or the  
23 business is in receivership is a subject of inquiry by the  
24 Court and into that party's management of the business of the  
25 company.

1           A.     Well, that's true, and that is especially true  
2 with respect to the bankruptcy assignments that I have  
3 undertaken either as a trustee or examiner. And those are  
4 two distinctly different roles that I would play. For  
5 example, as an examiner, again I'm basically going in and  
6 looking at the issue, if there's been any malfeasance with  
7 respect to management, where there's been mismanagement with  
8 respect to how the company's owners have managed the business  
9 and whether management really should be replaced. It's sort  
10 of a predecessor to the establishment of a trustee.

11                       As a Chapter 11 trustee, I'm actually  
12 placed in the shoes of management. I effectively replace the  
13 management of the company, I operate the business, I make a  
14 determination of how that business should be reorganized, if  
15 it should be reorganized, because in many cases the business  
16 should simply be liquidated. So I make all those decisions  
17 with respect to the company in those situations. So it is an  
18 investigation of management, the business records, and to  
19 make a determination of what really should be done.

20           Q.     And in those capacities, and particularly in the  
21 capacity in which you are essentially serving as either a  
22 trustee or taking over the operation of a business, do you  
23 also have to deal with questions such as the filing of tax  
24 returns by the companies that you have been put in charge of?

25           A.     Oh, absolutely. I mean, I am now responsible for

1 the company's filings of the tax returns -- either preparing  
2 them myself or having outside CPA firms involved, depending  
3 generally on the complexity of the situation. But yes, that  
4 would be a responsibility that I would have to undertake.

5 Q. Would it be fair for to us say, and in a pretty  
6 broad range of the kinds of cases that you have been involved  
7 in, dealing with the tax aspects or the tax implications of  
8 the conduct of participants is part of your job as a forensic  
9 accountant?

10 A. Oh, yes. I would say in a large number of the  
11 work I do, the cases I am involved with, the evaluation of  
12 tax returns becomes a key component -- just like the  
13 evaluation of the financial statements are a key component of  
14 the work I do. It is sort of the key documents that tell us  
15 the financial conditions of an enterprise.

16 Q. You are not actually yourself a tax preparer?

17 A. Not really. I certainly don't hold myself out to  
18 do that, but in some situations I have.

19 Q. Good. Fair to say that very frequently you are  
20 looking at the work done by the people who did prepare tax  
21 returns, both for individuals and for corporate entities?

22 A. That's true, yes.

23 Q. Have you been qualified as an expert by other  
24 courts?

25 A. Yes.

1 Q. And I say "by other courts," but by any court?

2 A. Yes. I have been qualified in State courts and in  
3 Federal courts as a financial expert, an expert on damages,  
4 forensic accounting, financial issues like statistics,  
5 economics, those kinds of things.

6 Q. This is, I take it, your first involvement in a  
7 death penalty case?

8 A. I think that is true, yes.

9 Q. Let's talk a little bit about the work that you  
10 have done in this death penalty case. First of all, do you  
11 know approximately when you were first retained to provide  
12 forensic services in connection with the defense of  
13 Mr. DeMocker?

14 A. Yes, I do.

15 Q. Can you tell us approximately when that was?

16 A. Approximately middle-late August of this year,  
17 2009.

18 Q. So your involvement in this matter really is  
19 fairly recent, it spans the last few months?

20 A. Yes.

21 Q. September, October, and this month?

22 A. Yes.

23 Q. And can you summarize for us generally the types  
24 of materials that you have reviewed in connection with this  
25 appointment?

1           A.     Yes. I have reviewed financial materials. For  
2 example, bank statements, credit card statements, tax  
3 returns, affidavits of financial position and condition,  
4 things that would be part of the divorce proceedings of  
5 Mr. DeMocker and Miss Kennedy.

6                     I reviewed lots of e-mail correspondence  
7 between various parties.

8                     I have looked at the expert report, or  
9 the report that was prepared by Mr. Echols.

10                    And I have looked at certain transcripts  
11 from testimony.

12           Q.     Just to be clear, then, you have reviewed, among  
13 the other things, the report that was submitted by Mr. Echols  
14 in connection with this particular proceeding?

15           A.     Yes.

16           Q.     And you have also, now, had an opportunity to  
17 review the testimony he provided in this proceeding?

18           A.     Yes, I have. And I've also reviewed certain legal  
19 pleadings. For example, the State's memorandum with respect  
20 to this proceeding, as well as the defense memorandum.

21           Q.     I was going to ask you that. You have reviewed  
22 both the State's memorandum filed at the end of last week and  
23 the memorandum filed on behalf of Mr. DeMocker with respect  
24 to this particular hearing?

25           A.     Yes.

1 Q. You have prepared a report?

2 A. Yes, I have.

3 MR. HAMMOND: Your Honor, might I mark the  
4 report for identification?

5 THE COURT: Sure.

6 BY MR. HAMMOND:

7 Q. Mr. Curry, do you have your copy of your report  
8 there in front of you?

9 A. Yes, I do.

10 THE CLERK: 155.

11 MR. HAMMOND: May I approach, Your Honor?

12 THE COURT: You may.

13 BY MR. HAMMOND:

14 Q. Mr. Curry, would you just take a quick look at  
15 this to help us be sure that what we've marked is a copy of  
16 the report that you prepared.

17 A. Yes, it is.

18 MR. HAMMOND: Your Honor, at this time, I  
19 would just like to have the report marked for identification.  
20 I may move its admission later, but we think it will be a  
21 guide to us as we go through his testimony.

22 Could I offer the Court this copy to look  
23 at?

24 THE COURT: I would appreciate that.

25 MR. HAMMOND: All the rest of us have copies,

1 I believe.

2 Q. Mr. Curry, I think you know, generally speaking,  
3 what the issues are that we have asked you to address as they  
4 relate to this particular proceeding. You've spent a lot of  
5 time looking at materials, but let's start out with kind of  
6 an understanding of what the areas are in which I am going to  
7 be asking you a few questions.

8 A. Okay.

9 Q. You are aware that the State has alleged, as what  
10 are called "aggravating circumstances," two that might have  
11 forensic accounting issues?

12 A. Yes.

13 Q. You know that one of those we will refer to, as we  
14 go along, as the "pecuniary gain aggravator"?

15 A. Yes.

16 Q. And you've heard us use that, and as we use that  
17 and maybe as Mr. Butner might on cross-examination today,  
18 when you hear us talking about pecuniary gain, you have a  
19 general idea that that is one of the aggravators on the table  
20 in this case?

21 A. Yes, I do.

22 Q. The second one is what goes by various names, but  
23 might be called the "witness-elimination" or "witness-killing  
24 aggravator"?

25 A. Yes.

1           Q.     And you may hear us use that phrase from time to  
2 time. I would like, I think, to start with that second one,  
3 first.

4                     Have you -- in the report that we have marked  
5 as Exhibit 155, have you addressed issues with respect to  
6 what has been identified as the "witness-elimination issues"  
7 in this case?

8           A.     Yes, I have.

9           Q.     As we have listened to the testimony -- I think to  
10 get to the heart of what has been claimed there, we probably  
11 should begin with an understanding of what the concept of  
12 "fraud" is.

13                    Do you understand here -- and I am sure  
14 you do -- that this particular aggravator really turns on, at  
15 least in part, whether there was some act of fraud that might  
16 then have resulted in some judicial proceeding of some kind?  
17 So maybe we could start by having your understanding of what  
18 the word "fraud" connotes in your work as a forensic  
19 accountant.

20           A.     Sure. And I do agree that, based on my review of  
21 Mr. Echols' report, based on my review of the transcript, he  
22 was asserting that there were several elements of fraudulent  
23 activity or fraudulent reporting with respect to Mr. DeMocker  
24 and some of his financial records. So in my report I have  
25 given a definition of fraud, and I did that so that I would



1 have it accurately quoted. And if I can read it, I would be  
2 happy to. It is on Page 3 of my report and the third full  
3 paragraph.

4 MR. BUTNER: No objection that he read from  
5 the report, Judge, for that specific thing.

6 THE COURT: Thank you. You are anticipating  
7 what my question was, Mr. Butner. Thank you.

8 Go ahead.

9 THE WITNESS: Thank you.

10 And what I indicated is "fraud" can be  
11 defined as a, quote, "knowing misrepresentation of the truth  
12 or concealment of a material fact to induce another to act to  
13 his or her detriment." That comes from -- really comes from  
14 Blacks Law Dictionary, but also referenced in various AICPA,  
15 which is the association that I belong to as an a accountant,  
16 in many of their treatises with respect to the practice in  
17 the forensic accounting area. So that is a very common  
18 definition of fraud.

19 And there are several essential elements  
20 of fraud that are also discussed, two of which I've  
21 referenced, and I think two of which are fairly significant.  
22 And that is one of the essential elements of fraud is that  
23 the party relies -- the party or victim or the party that has  
24 been defrauded relies on the concealment or the  
25 misrepresentation. And the other essential element is the

1 party is damaged by that reliance on a misrepresentation or  
2 concealment.

3 Q. The first factor, as you have stated in your  
4 report and in the definition, is a knowing misrepresentation  
5 of a fact or the concealment of the truth of a fact that the  
6 perpetrator wishes not to have disclosed.

7 A. Right.

8 Q. With that definition in mind, let's look at the  
9 couple of issues that appear to be the focus of Mr. Echols'  
10 report. He focused on and described, here in the courtroom  
11 in some detail, issues with respect to what he described as  
12 the Book of Business.

13 Are you familiar with that part of his  
14 assessment?

15 A. Yes, I am.

16 Q. With respect to that Book of Business, can you  
17 just summarize for us your understanding, first of all, of  
18 what that phrase means to you as someone schooled and trained  
19 in forensic accounting?

20 A. Well, I think that phrase by itself is pretty  
21 ambiguous. It doesn't have a standard definition. It can  
22 mean a lot of different things to a lot of different people.  
23 It could mean, for example, the physical location of files  
24 which constitute client records, for example, that any  
25 particular business might have -- not just a brokerage firm,

1 but an accounting firm, a law firm, or any business. It  
2 could constitute that.

3 I don't think that is really what, in  
4 this case, the Book of Business is meant to portray. I think  
5 what "Book of Business" means in this particular aspect, on  
6 this particular matter, is it really is talking about client  
7 relationships -- relationships that an individual has with  
8 respect to various clients that they may do business with.

9 So it is that kind of intangible factor  
10 or tangible trait, as opposed to a physical asset, like an  
11 actual hard asset -- a file cabinet full of materials or  
12 things like that, or trade secrets that are somehow stored  
13 away. It is not a physical asset in terms of a Book of  
14 Business. We are really talking about relationships.

15 Q. Well, if you define a Book of Business that way,  
16 as the relationships that a financial advisor might have,  
17 should the sum of those financial relationships be reduced to  
18 a dollar number and put on your balance sheet?

19 A. Should they?

20 Q. Yes.

21 A. I don't think so, no. I don't think they should.  
22 I don't think they are, in general, done that way, no.

23 Q. Can you explain to us why you wouldn't expect to  
24 see on a balance sheet someone's Book of Business if it's  
25 defined the way we just defined it?

1           A.     Well, the relationships with clients, where it's  
2 going to show up in the financial statements, it's going to  
3 show up as earnings, and past and current earnings of a  
4 particular individual. That is where the value of those  
5 relationships inure. It inures into one's ability to earn  
6 money -- their earning capacity, if you will. The better the  
7 relationship, generally speaking, the more earnings you would  
8 think somebody would make.

9           Q.     So if you were preparing, on behalf of a financial  
10 advisor, his income statement, would there be a number on  
11 there that would be in some way reflective of this  
12 intangible?

13          A.     More than someday. His earnings would be  
14 reflective of those relationships.

15                         And if you wanted to compare various  
16 people in the profession to see how they compare to each  
17 other, the individuals that have the higher earnings are  
18 generally going to be the individuals that have better skills  
19 at what they do -- it doesn't have to just be the  
20 relationship aspect. But in establishing a relationship and  
21 maintaining their relationship, one has to use their own  
22 talents and their own abilities.

23                         Some people may be very good with  
24 communication. Some people may be very good with exhibiting  
25 the kind of confidence and trust that a financial advisor or

1 any particular professional advisor would demonstrate. So  
2 the more a person has those kind of skills, generally  
3 speaking, their earnings will probably reflect that.

4 So that is where you will find, and that  
5 and is where it would be disclosed, those kind of assets.

6 Q. As we understand it, the accusation here of fraud  
7 focuses most directly on Mr. DeMocker's 2007 tax return and  
8 the failure to include that and of his financial statements  
9 in connection with the divorce.

10 Is there, in your judgment, any fraud or  
11 falsehood in failing to disclose on his financial statement,  
12 for purposes of his divorce, this intangible Book of  
13 Business?

14 A. Well, I would say -- and I say in my report --  
15 that I think he did disclose it. I don't think it is a  
16 question of whether Mr. DeMocker concealed that kind of  
17 information and concealed the value associated with his  
18 client relationships. I think it's on the financial  
19 statements.

20 It is on the income statement, which is  
21 where he listed and he disclosed his earnings history -- I  
22 think back to 2004, going through 2007. That information is  
23 clearly there. It shows a high level of income that he  
24 received, an increasing level of income that I think most  
25 objective people looking at it would say it was a significant

1 amount of money that he was making.

2 So he has disclosed that he has  
3 abilities, skills, talents, and given the occupation he is  
4 in, clearly client relationships. So it is on his financial  
5 statements.

6 It is not on -- and what Mr. Echols  
7 complained about, it's not on the balance sheet. It is not a  
8 line item listed out in the balance sheet that says "Book of  
9 Business, X amount of dollars." And as I said in my report  
10 and I will say here, I don't think it should be.

11 Q. Mr. Echols, if I recall correctly his testimony,  
12 of course disagrees with what you have said this morning, and  
13 he -- among others things, he sites back to the period in  
14 2004 when Mr. DeMocker leaves A.G. Edwards and comes to UBS.

15 Are you familiar with Mr. Echols'  
16 analysis on that question?

17 A. I believe so, yes.

18 Q. And he concludes, at that time, that looking at  
19 those documents one can tell that, of course, a Book of  
20 Business was recognized at that time.

21 How do you respond to that?

22 A. Well, I think what was recognized, at that time,  
23 was a person, an individual, who had a significant amount of  
24 prior earnings, an earnings history, very much demonstrated  
25 ability to do the kind of job that UBS wanted him to do, and

1 they were willing to pay him for that. It wasn't a payment  
2 for a particular set of clients. Of course, they would hope  
3 that he would attract clients to the business -- maybe not  
4 only the ones that he had already serviced before, but  
5 potentially new clients, new areas that he could use his  
6 skills and his training and his abilities to generate  
7 production, generate income for UBS.

8 So it was certainly in recognition of his  
9 ability. There is no question about that. That's the  
10 personal asset side of client relationships that I am talking  
11 about. Certainly it has value, and certainly he had  
12 demonstrated it through his earnings, and that is what they  
13 were willing to pay for.

14 Q. Mr. Echols also suggested that it was relevant to  
15 note that at some point in an e-mail Mr. DeMocker might have  
16 said that he could leave UBS and go down the street and set  
17 up a new business and be profitable, might even have said he  
18 could have a business that would generate a million dollars.

19 Are you familiar with that general set of  
20 allegations that Mr. Echols made?

21 A. Well, yes, generally. I think that -- I am not  
22 sure I would agree with the way that you characterized what  
23 that said, but generally I think I am familiar with the point  
24 he was trying to make.

25 Q. Reject my characterization. That would be a wise

1 thing to do.

2 Tell me what your characterization would  
3 be.

4 A. I think what Mr. Echols tried to argue was that  
5 Mr. DeMocker had said that he could go down the street, and a  
6 competing brokerage firm would pay him a million dollars or  
7 he could get a million dollars from that firm for his Book of  
8 Business. I don't think that is accurate in terms of what he  
9 said, but I think that -- the thing that Mr. Echols, I think,  
10 fails to realize, or fails to recognize, is it may be true  
11 that another firm would pay Mr. DeMocker money to come and  
12 work for them, but as UBS did, to do so, he would subject  
13 himself to a significant liability.

14 In other words, what UBS did is they  
15 fronted him some money to come and join them, but they said  
16 "You now owe us that money if you leave. So you have to work  
17 for us over a period of years before you can actually take  
18 that money in as income."

19 Now that would be true for any competing  
20 firm. So the idea that, as Mr. Echols -- the point he is  
21 trying to make is that Mr. DeMocker should have placed this  
22 asset, this value of his Book of Business on his balance  
23 sheet as a representation of this asset he has. But even if  
24 you agreed that it should be on the balance sheet, which I  
25 think I've explained why I don't think it should be -- but



1 even if you agreed it should be, there would have to be set  
2 up a corresponding liability for the fact that he would be in  
3 a situation where he would have to pay that back if he didn't  
4 fulfill his employment agreement.

5 Just like he had to do at UBS, which is  
6 why in 2007 and 2008 there is still a liability that he owes  
7 to UBS called the Employee Forgivable Loan, the EFL, if he  
8 leaves. He still owes them money back for that front money  
9 that they gave him in 2004.

10 So if you even want to argue there is a  
11 missing asset on the balance sheet, which is what they claim  
12 is fraudulent, that that asset is not there, there would have  
13 had to be a corresponding liability in the same amount,  
14 meaning there would be no net assets with respect to the  
15 balance sheet.

16 Q. To state it another way, then, even if it were  
17 included on the balance sheet, it couldn't be material  
18 because it would be a wash?

19 A. That is exactly correct. You said that better  
20 than I did. Yes.

21 Q. That will be the only time today I do that.

22 I wanted to hesitate for just a moment  
23 over the EFL, since you mentioned it. I think Mr. Echols at  
24 some point suggested that the treatment of the Employee  
25 Forgivable Loan was itself a separate act of concealed fraud

1 of some kind. And I think you addressed this in a footnote  
2 in your materials.

3 Can you just spend a minute telling us  
4 what conclusions you've reached with respect to the EFL and  
5 its treatment?

6 A. Yes, and maybe I can explain that point, as well.  
7 Because I think it was a significant point he was trying to  
8 make, and I think he even basically said if the liabilities  
9 on the balance sheet, this EFL amount of some \$290,000 as of  
10 January of '08, that the problem is is that there is not the  
11 corresponding asset on the balance sheet. And that was the  
12 problem -- that you had the liability, and you can't do that  
13 without having asset.

14 The problem with that and why Mr. Echols  
15 is wrong with respect to that is because on day one in 2004,  
16 when the liability was first put on the balance sheet, at  
17 some 590- or \$600,000, there was an asset of \$600,000 that  
18 would be on Mr. DeMocker's balance sheet as an asset. It  
19 would be cash, because he received \$600,000 of cash.

20 So without getting into debits and  
21 credits of accounting, but I think it's pretty  
22 straightforward, when that took place and he received  
23 \$600,000, that cash was on the balance sheet as an asset. At  
24 the same time, there is a \$600,000 loan as a liability on the  
25 balance sheet, because that cash hasn't been earned yet. He

1 has to continue to work.

2                   So now let's fast forward three years  
3 where some of that liability has been worked down because  
4 he's worked there, but the cash is gone. It was spent. It  
5 was either spent to pay down debts, spent on entertainment --  
6 whatever it was spent for really doesn't matter. The point  
7 is, the cash is gone. So there is no asset with respect to  
8 that liability that is going to exist on the balance sheet.

9                   If they had put that \$600,000 into a bank  
10 account and just let it sit there, then yes, it would be on  
11 the balance sheet, but that is not what happened. So there  
12 is no issue here at all with respect to not having an asset  
13 on the balance sheet to match that EFL. That is simply  
14 incorrect.

15           Q.     Let me go back, now, to the Book of Business and  
16 to your definition of fraud. You said that one element of  
17 fraud is either a false statement made or an effort to  
18 conceal.

19                   You have looked at the papers surrounding  
20 the divorce proceedings in this case?

21           A.     Yes.

22           Q.     You know that there were mediation sessions?

23           A.     Yes.

24           Q.     And I think you also know that both sides had  
25 lawyers?

1 A. Yes.

2 Q. They had accountants?

3 A. Yes.

4 Q. You've looked at the materials -- maybe not all of  
5 them, but you've looked at a fair amount of materials going  
6 back and forth in the course of that divorce proceeding?

7 A. Yes.

8 Q. Would you agree, or have you seen anything that  
9 would suggest that Mr. DeMocker's -- and I hesitate to even  
10 use the phrase -- but his Book of Business was in some way  
11 concealed?

12 A. No. Not at all.

13 Q. Indeed, wouldn't it be more accurate to say that  
14 if you define his Book of Business as his earning ability and  
15 his relationship with UBS, it was all over that divorce  
16 proceeding?

17 A. Yes. It was in pretty much plain view, yes.

18 Q. In the materials that you looked at, did you see  
19 any evidence that people assisting the victim in this case,  
20 Carol Kennedy, had people advising her with respect to what  
21 position she might take on this so-called Book of Business?

22 A. Oh, yes. There is tons of information that would  
23 suggest that, yes.

24 Q. Can you just give us a very general overview of  
25 what position others were advocating that Carol Kennedy take

1 in the divorce proceeding with respect to the value of  
2 Mr. DeMocker's business?

3 A. Well, I think --

4 MR. BUTNER: Objection, Judge. Foundation for  
5 this. If we could have more specifics in terms of what he's  
6 reviewed in order to offer this overview, so to speak.

7 THE COURT: I think that is what is being  
8 asked for. So overruled, if you understand the question in  
9 same way.

10 THE WITNESS: Yes. I think certainly with  
11 respect to her financial advisor, he spent a lot of his time  
12 in analyzing what he called the Book of Business, putting a  
13 value on the Book of Business and, quite frankly, advocating  
14 to Miss Kennedy that she should pursue that. I think they  
15 talked about ways to pursue it, in terms of trying to claim  
16 that it was a marital asset within the community, and that  
17 she should try to claim that as part of the divorce  
18 proceedings. So I think that's very clear. I am not so sure  
19 about what the communications were with her lawyer or what  
20 his position was on that. I don't know. But certainly the  
21 financial advisor took that position.

22 THE COURT: You are referring to Mr. Casalena.

23 THE WITNESS: Yes, Your Honor.

24 BY MR. HAMMOND:

25 Q. You've seen evidence that Mr. Casalena was

1 continuing to urge that position, as you've summarized it,  
2 all the way up to and including the final divorce settlement  
3 in late May of 2008.

4 A. Yes.

5 Q. So at least in your mind, having looked at this,  
6 there could be no doubt that this was an issue known and  
7 debated on both sides?

8 A. Absolutely. This is not a situation where you  
9 have got a Swiss bank account full of money that is not  
10 listed on a financial statement and nobody knows about it.  
11 That is a concealed asset, of course. That would be  
12 problematic.

13 This is an issue that was well understood  
14 by the parties and well debated by the parties in terms of  
15 what it meant and how it should be valued and how it should  
16 be treated in the divorce. The parties took very different  
17 opinions on that.

18 Q. And indeed, does the evaluation of Steve  
19 DeMocker's earning potential, his future, become relevant to  
20 determining what the alimony should be -- what kind of  
21 alimony payments a man in a divorce like this should be  
22 making?

23 MR. BUTNER: Objection. Foundation.

24 THE COURT: Sustained.

25 MR. HAMMOND: Let me ask the question this

1 way.

2 Q. Do you know what factors went in, from your review  
3 of the files, into determining in the settlement of an amount  
4 of alimony?

5 A. Do I know what factors?

6 Q. Yeah.

7 A. Not specifically, no.

8 Q. Let's go on, then, to another aspect of the  
9 alimony question.

10 Do you know that there is an issue in  
11 this case with respect to Steve DeMocker's inclusion of a  
12 summary of alimony-related payments in his 2007 tax return?

13 A. Well, I don't know about the summary. The tax  
14 return has a line item on it for alimony. It's a deduction  
15 for the person who paid the alimony. The basis of it would  
16 be, obviously, the individual items that went into that  
17 number.

18 Q. Does Mr. Echols claim that the number that appears  
19 in the 2007 tax return for alimony payment was itself in some  
20 way a fraudulent number?

21 A. I think that is what his report says, yes.

22 Q. And in your review of the materials and  
23 communications back and forth, did you find evidence that  
24 there was fraud, as you defined it, in connection with the  
25 development and the use of that number --

1 MR. BUTNER: Objection.

2 MR. HAMMOND: -- in the return?

3 MR. BUTNER: Objection. Lack of foundation.

4 This witness has testified that basically he is not a tax  
5 preparer.

6 THE COURT: Overruled.

7 You may answer.

8 THE WITNESS: No. I do not find evidence of  
9 fraud with respect to the alimony deduction in the 2007 tax  
10 return.

11 BY MR. HAMMOND:

12 Q. What did you find in terms of the way in which  
13 Mr. DeMocker and the people advising him developed the number  
14 that was used in the 2007 return on the alimony line?

15 A. My understanding is that he was told --  
16 Mr. DeMocker was told by his CPA --

17 MR. BUTNER: Objection. Hearsay.

18 And may I have voir dire of this witness,  
19 please?

20 THE COURT: Sure. Granted on the voir dire.

21 MR. BUTNER: Thank you, Judge.

22 VOIR DIRE EXAMINATION

23 BY MR. BUTNER:

24 Q. Mr. Curry, did you confer with Mr. DeMocker's CPA?

25 A. No. I read some materials where he was questioned



1 by Mr. Echols.

2 Q. Did you confer with Mr. DeMocker as to what advice  
3 his CPA gave him?

4 A. No.

5 MR. BUTNER: Judge, again, I re-urge my  
6 objection. Hearsay. Lack of foundation.

7 MR. HAMMOND: Your Honor, let me ask a couple  
8 of additional questions.

9 THE COURT: Go ahead.

10 DIRECT EXAMINATION RESUMED

11 BY MR. HAMMOND:

12 Q. In the work that you did on this case, did you  
13 review the interview conducted by Mr. Echols? I think you  
14 just said you did -- of the accountant who assisted  
15 Mr. DeMocker?

16 A. Yes.

17 Q. Did you find in that document an explanation for  
18 the manner in which the total was arrived at that appears in  
19 the 2007 return?

20 A. I found an explanation and the factors that would  
21 go into that analysis.

22 Q. And in the work that you have done and the kinds  
23 of cases that you talked about earlier this morning,  
24 understanding that you aren't here to provide the truth of  
25 the ultimate things said, are these kinds of factors -- that

1 is, looking at the tax return, looking at documents in the  
2 tax file, looking at interviews of people like the gentleman  
3 who assisted Mr. DeMocker here -- are those the kinds of  
4 things that you would look at in doing an assessment of  
5 whether someone committed fraud?

6 A. Yes. And I would also include the e-mails, which  
7 also have relevant information with respect to this issue.

8 Q. Summarize for us what in the e-mails you found to  
9 be relevant to this issue.

10 A. Because there is significant discussion between  
11 Mr. DeMocker and Miss Kennedy with respect to this whole  
12 issue of what can be included as alimony, and he made  
13 references to what factors he considered to be the guidelines  
14 for purposes of determining what the alimony would be, and  
15 those are the factors that he says he used. She simply  
16 disagreed with it, and didn't agree with the interpretation,  
17 at least at first.

18 Q. Did you also find that there was a relationship  
19 between the temporary order issued in the divorce proceeding  
20 and the numbers eventually taken on the tax return?

21 A. Yes.

22 Q. Can you explain that correlation for us? Is  
23 that -- first of all, is that relevant to your opinion here?

24 A. Yes, it is very relevant.

25 Q. Explain to us why it is relevant that there may be

1 a connection between the numbers used in the temporary orders  
2 in divorce and the ultimate tax return?

3 A. Because the alimony that is deducted has to be  
4 related to a court order. That is one of the critical  
5 factors with respect to what you can deduct. It has to be a  
6 payment made pursuant to the benefit of another party that is  
7 pursuant to a court order.

8 So those are the guidelines that I am  
9 talking about that is in the documents that I reviewed that  
10 is the basis for what Mr. DeMocker did with respect to  
11 accumulating the numbers for the alimony deduction.

12 MR. BUTNER: Okay, Judge, may I have this  
13 witness on voir dire just a little bit further to clarify  
14 what it is that he is relying upon before he offers his  
15 opinion?

16 THE COURT: Yes.

17 VOIR DIRE EXAMINATION

18 BY MR. BUTNER:

19 Q. Mr. Curry, if I understand your earlier testimony,  
20 basically you didn't talk with Mr. Raider, the accountant,  
21 but you did look at all of the e-mails, or at least a number  
22 of the e-mails, I should state, between Miss Kennedy and  
23 Mr. DeMocker concerning the 2007 tax return?

24 A. Yes.

25 Q. Okay. And you didn't talk with Mr. DeMocker, but

1 the information that you are relying upon to formulate your  
2 opinion about what factors Mr. DeMocker was using is what he  
3 stated in the e-mails to Ms. Kennedy?

4 A. In part, yes.

5 Q. And what is the other part that you are relying  
6 upon?

7 A. What Mr. Raider told Mr. Echols.

8 Q. What Mr. Raider told Mr. Echols in the interview?

9 A. Yes.

10 Q. Do you recall that Mr. Raider told Mr. Echols that  
11 he did not give Mr. DeMocker advice before preparing the tax  
12 return about the alimony?

13 A. No. That is not my recollection. I think he told  
14 him what types of factors -- he told him the basis for what  
15 could constitute an alimony deduction. He didn't tell him  
16 what specific numbers to use, but he told him the factors.

17 Q. In fact, Mr. Raider testified that Mr. DeMocker  
18 just gave him the numbers and Mr. Raider plugged it into the  
19 tax return; right?

20 A. I don't dispute that. The numbers themselves came  
21 from Mr. DeMocker. The basis for it and the factors applied  
22 to get those numbers was given to him by Mr. Raider.

23 Q. Didn't Mr. Raider testify that, basically,  
24 Mr. DeMocker came to him with the numbers, and Mr. Raider  
25 just put it into the tax return, and this was prior to the

1 time that he had given him any advice on what constituted  
2 alimony?

3 A. I don't recall that.

4 MR. BUTNER: Thank you, Your Honor.

5 THE COURT: You may proceed, Mr. Hammond.

6 DIRECT EXAMINATION RESUMED

7 BY MR. HAMMOND:

8 Q. Mr. Curry, the chain of allegations here seem to  
9 rely on some assumption that with respect to these issues  
10 that we talked about in the last half-hour, the Book of  
11 Business, maybe the EFL record, and maybe the numbers taken  
12 in this tax return, would in some way become the basis for a  
13 claim that would then result in some finding of fraud by  
14 Mr. DeMocker.

15 Are you aware that that general idea is  
16 what they are thinking about here?

17 MR. BUTNER: Objection. Ambiguous. Compound.  
18 Complex. Confusing.

19 THE COURT: Sustained.

20 Let's follow-up on it. It was multiple  
21 questions, so divide it up.

22 BY MR. HAMMOND:

23 Q. Mr. Curry, did you find any evidence after May the  
24 28th, which is the date of the divorce, that Carol Kennedy  
25 was intending to go to the IRS to tell the IRS that there had

1     been a false statement made in the tax return with respect to  
2     the Book of Business?

3             A.     I think your question is not answerable the way  
4     you ask it, because the Book of Business is not a tax return  
5     issue.

6             Q.     How about going to the Court and suggesting to the  
7     Court that the divorce ought to be set aside because of the  
8     Book of Business issue?

9             A.     No. I didn't see any e-mails where she mentioned  
10    that or threatened that to Mr. DeMocker.

11            Q.     What about going to the IRS because of claimed  
12    false statements with respect to the alimony deduction in the  
13    tax return?

14            A.     I didn't see any correspondence between her and  
15    Mr. DeMocker with respect to that issue, as well.

16            Q.     Did you see anything in the documents you looked  
17    at, including the e-mails and the communications between the  
18    accountants and Miss Kennedy, that would suggest to you that  
19    there was an impending threat here that if something horrible  
20    weren't done, Mr. DeMocker would be turned in to law  
21    enforcement and prosecuted?

22            A.     No.

23            Q.     Prosecuted either for making some false statement  
24    in his divorce or false statement in connection with his tax  
25    returns.

1           A.     That's correct.

2           Q.     Let's go on to the other aggravator alleged in  
3 this case, the one that I referred to earlier as the  
4 "pecuniary gain aggravator."

5           THE COURT:   Would you mind very much, since  
6 this is a transition by you, to take a break at this point?  
7 My staff has been going since eight o'clock because we had  
8 another matter in the room.

9           MR. HAMMOND:   Certainly.

10          THE COURT:   Thank you.   I will take a  
11 ten-minute recess.

12                               (Brief recess.)

13          THE COURT:   The record reflects the presence  
14 of the various counsel, although Mr. Sears stepped out, and  
15 the defendant is present.   We are continuing direct  
16 examination with Mr. Curry.

17                       You may proceed, Mr. Hammond.

18          MR. HAMMOND:   Thank you, Your Honor.

19                       DIRECT EXAMINATION CONTINUED

20          BY MR. HAMMOND:

21           Q.     Mr. Curry, before the break I was asking you about  
22 reviewing e-mails that may have addressed this question of  
23 the position, if you will, of Carol Kennedy about the  
24 temporary order and the tax returns in the 2008 time frame.  
25 One of the documents that has been admitted in this case --

1 MR. HAMMOND: May I approach, Your Honor?

2 THE COURT: You may.

3 BY MR. HAMMOND:

4 Q. -- is Exhibit 138.

5 Is this a packet of exhibits that you  
6 have reviewed? And I will tell you, for the record, that  
7 these are exhibits that were assembled by us on behalf of  
8 Mr. DeMocker and were submitted as a group during Mr. Echols'  
9 testimony.

10 A. Yes. I have seen these, yes.

11 Q. You have pointed out to me on a couple of  
12 occasions e-mails in there that you think are relevant to the  
13 question whether there had been at least some point in time  
14 here where Carol Kennedy had come to realize that there was a  
15 basis for the position taken with respect to the alimony  
16 payments.

17 A. Yes.

18 Q. Can you show us that, please.

19 A. It's No. 14 in the package, which is a March '03  
20 e-mail from Carol Kennedy to John Casalena.

21 Q. Would you read to us the part of that e-mail that  
22 you found relevant to the question whether there was a  
23 continuing basis for a dispute with respect to the alimony  
24 payments?

25 A. Well, the thing in here that I thought was



1 interesting and it is relevant to my opinions in this matter  
2 is the second to the last paragraph where she says: "In the  
3 meantime, FYI" -- for your information -- "the amended  
4 temporary orders that Steve was running his tax numbers off  
5 of turns out to be the real deal after all is attached."

6 MR. BUTNER: Please read the remainder of that  
7 paragraph.

8 THE COURT: Would you, please.

9 THE WITNESS: Sure.

10 "I never sent a copy. Oversight, I  
11 guess. I guess it remains to be seen whether all of the  
12 credit card debit service he is claiming is legit. At this  
13 point in the evening I feel pretty helplessly screwed and  
14 like just giving up. I made 9,000 to his 526,000 this year.  
15 My kids aren't speaking to me, and I am living like a pauper,  
16 having borrowed money from everyone I know just to get  
17 through this."

18 BY MR. HAMMOND:

19 Q. Having read that entire packet of both the e-mails  
20 that you read and the others, do you find any basis for  
21 believing that there was a continuing event of undisclosed  
22 fraud that would provide a basis for a claim or a prosecution  
23 by the IRS?

24 MR. BUTNER: Objection. Judge, it is relying  
25 upon hearsay.

1                   May I have voir dire as to what actually  
2 this witness is relying upon to offer his opinion in that  
3 regard?

4                   MR. HAMMOND: Your Honor, before he does so, I  
5 allowed Mr. Butner the last time to make his hearsay  
6 objection, and I think we all know, having been here in this  
7 proceeding for the last few days, that hearsay in Rule Five  
8 proceedings is appropriate, at least under some  
9 circumstances, and hearsay considered by experts, if the  
10 expert deems it useful to his opinion, is also admissible.  
11 But we have had all kinds of hearsay here. If we are just  
12 having a hearsay objection --

13                   MR. BUTNER: Foundation, too.

14                   THE COURT: I understood the voir dire to be  
15 pertaining to foundation. I was prepared to overrule the  
16 hearsay objection, but I will let you have some voir dire.  
17 And then we may need to go back to the court reporter for  
18 reading of the question back as it was posed.

19                   MR. BUTNER: Thank you.

20                   THE COURT: Go ahead.

21                   VOIR DIRE EXAMINATION

22 BY MR. BUTNER:

23                   Q.     Mr. Curry, did you ever look at any kind of  
24 testimony from the tax preparer for Carol Kennedy concerning  
25 what Carol Kennedy was going to do in regard to the 2007

1 income tax return filed by Mr. DeMocker?

2 A. No, I have never seen any such testimony.

3 Q. You never heard of a tax preparer named Cynthia  
4 Wallace?

5 A. I've heard her name, yes.

6 Q. You've heard of her name?

7 A. Yes.

8 Q. Did you review her testimony in connection with  
9 Carol Kennedy's consultations of her concerning the 2007 tax  
10 return?

11 A. No.

12 Q. So you didn't incorporate any of that kind of  
13 information into your opinion?

14 A. No.

15 MR. BUTNER: Thank you, Judge.

16 THE COURT: Do you need the question read  
17 back, Mr. Hammond?

18 MR. HAMMOND: Would you like it read back.

19 THE COURT: If you could, Roxanne.

20 (Whereupon, the relevant portion  
21 of the record was read back.)

22 BY MR. HAMMOND:

23 Q. What I intended to say was a prosecution brought  
24 for fraud by the Internal Revenue Service, which is what I  
25 understood Mr. Echols to be talking about or by some other

1 prosecuting agency.

2 A. Well, as I said in this report and I testified to  
3 earlier, I don't see any indicia of fraud in respect to the  
4 tax return issue in the deduction of alimony. That does not  
5 mean to say that it's my opinion that the deduction was  
6 completely accurate or would have been agreed to by the IRS.

7 Just so that my testimony is very clear  
8 here, I am not saying that there was not a disagreement  
9 between Miss Kennedy and Mr. DeMocker as to the amounts he  
10 claimed on the tax return -- on his tax return as alimony.  
11 There clearly was a disagreement.

12 The issue that this particular e-mail  
13 addresses for me, in terms of my opinion that you asked me  
14 about, is this e-mail suggests that Miss Kennedy has now  
15 realized that the underlying bases that Mr. DeMocker had for  
16 claiming these deductions flowed from the temporary order,  
17 and that is very, very critical. Because you have to have  
18 that order ordering payments to be made on the benefit of the  
19 spouse to be even able to claim alimony. So it has to derive  
20 from that order.

21 And I think here she is recognizing that  
22 what he is doing is pulling numbers and putting it in there  
23 and they're derived from the order, and she disagrees with  
24 his interpretation of the order in terms of what can be  
25 deducted and what would not be able to be deducted.

1           Q.     Now, I want to go back to the first thing you said  
2 in that answer, that you are not here to testify that every  
3 item has been tied back and is perfectly accurate. There  
4 could be errors in there.

5           A.     Sure, there could be errors in there.

6           Q.     In your years of experience, typically tell us  
7 what happens when there are disputes between two taxpayers,  
8 with respect to the propriety of claiming deductions on a tax  
9 return?

10          A.     Yes.

11          Q.     What happens? What are the range of things that  
12 happen?

13                         We are talking here about homicide to  
14 avoid some implication or some event. But you know from your  
15 experience what typically happens when taxpayers disagree.

16          A.     Well, specifically with respect to an alimony  
17 issue, since that is sort of at the heart of this?

18          Q.     Sure. Let's take alimony first.

19          A.     The alimony issue is interesting because when  
20 someone claims an alimony deduction on their tax return, they  
21 have to identify the Social Security number of the person of  
22 whom the alimony went in favor of. And therefore, the IRS  
23 has a very easy way of identifying on that person's tax  
24 return whether they claimed the same amount as income.

25                         If there are material differences between

1 those numbers, I would imagine in most cases the IRS is going  
2 to send out a notice, because it is going to be flagged on  
3 their computer system, that there is a difference, a  
4 mismatch. And the IRS wants to get the correct amount of  
5 taxes paid. So they are going to send out a notice and  
6 indicate to the two parties that there is a difference  
7 showing on the two parties' tax returns and that they need  
8 substantiation for the number for them to make a  
9 determination of what is the correct number. And once they  
10 determine the correct number, they are going to send a notice  
11 of probably penalties, interest, and additional taxes owed  
12 from the party that had the incorrect number on the return.

13 Q. And if the party gets one of those notices and has  
14 conferred with the IRS, and the IRS says no, you are wrong,  
15 they impose their fine or their penalty. And then what does  
16 the taxpayer do?

17 A. Well, they should pay it.

18 Q. What if the taxpayer still disagrees?

19 A. With the IRS's ruling?

20 Q. Sure.

21 A. That is why you have tax court.

22 Q. Oh, you can go to court?

23 A. Hire a lawyer, such as yourself, and go to court.

24 Q. You couldn't hire me, but you could hire a  
25 competent lawyer.

1           A.     If a taxpayer disputes a decision like a field  
2 decision, you certainly can file a suit and go to tax court.

3                   THE COURT: The record will reflect that  
4 Mr. Sears has returned.

5                   MR. SEARS: Thank you.

6 BY MR. HAMMOND:

7           Q.     I think that same kind of series of events can  
8 happen outside the alimony area. In your experience, have  
9 people -- let's say that Carol is not the taxpayer here, but  
10 is simply dissatisfied with something that she knows was in  
11 Steve DeMocker's tax return. Can she complain to the IRS?

12           A.     Yes.

13           Q.     And what typically happens when another person who  
14 may not be directly affected says I think there is something  
15 wrong in the tax return -- I think there's been a mistake?

16           A.     Then it's up to the IRS to decide if they want to  
17 pursue that or not.

18           Q.     So the IRS can either not pursue it or conduct an  
19 audit. Is that a possibility?

20           A.     Yes.

21           Q.     They can send an examiner out to talk to the  
22 taxpayer?

23           A.     Yes.

24           Q.     And indeed, this kind of thing happens all the  
25 time, doesn't it?

1 A. Yes.

2 Q. There probably is no way you can answer this, and  
3 if you can't, just tell me.

4 But do you have any idea what percentage  
5 of what we might call "tax disputes" wind up being criminal  
6 prosecutions for fraud?

7 A. I can't give you a percentage. I'm sorry.

8 Q. Do you think it's like 90-percent?

9 A. No.

10 MR. BUTNER: Objection. He just said he had  
11 no idea.

12 THE COURT: Sustained.

13 MR. BUTNER: You need to take the stand,  
14 Mr. Hammond, if you want to testify.

15 MR. HAMMOND: Mr. Curry, could you come down  
16 here?

17 Q. Let's move on. We had started, just before the  
18 break, to talk about the other aggravator here, the pecuniary  
19 gain aggravator.

20 A. Yes.

21 Q. Since the date of the filing of your report, we  
22 have received the hearing memorandum from the State that you  
23 told us earlier today that you read.

24 A. Yes.

25 Q. Do you have that in front of you there?



1 A. I can get it.

2 Q. Would you, please.

3 A. I have it.

4 Q. I would like you to turn to the State's treatment  
5 of this issue, which begins at the bottom of Page 2. Do you  
6 see that?

7 A. I do.

8 Q. The theme here is that this is a case in which the  
9 homicide of Carol Kennedy was motivated by a desire on the  
10 part of Mr. DeMocker for pecuniary gain. You understand that  
11 that is the thrust of what is being said here?

12 A. Yes.

13 Q. I would like to help us address some of the  
14 particulars that appear in support of that argument on  
15 Pages 3 and 4 of the State's memorandum.

16 First of all, the State claims that at  
17 the end of 2007, Mr. DeMocker had a net cash shortage of  
18 170,000.

19 Do you see that?

20 A. It is in the middle of the paragraph, yes.

21 Q. And then in the first six months of 2008, he had a  
22 net cash shortage of over \$100,000.

23 Do you see that, as well?

24 A. Yes.

25 Q. And then the State says, essentially, that he had

1 no way to pay his debts, that he was upside down?

2 A. Right.

3 Q. And indeed, he was so upside down that he had to  
4 borrow money from his family?

5 A. Yes, it says that.

6 Q. The State then goes on to argue that all of these  
7 financial pressures become intensified as a result of events  
8 that happened in 2008. But let's pause here and talk about  
9 what you have found in looking at Mr. DeMocker's financial  
10 condition in 2007 and in 2008.

11 A. All right.

12 Q. And it occurs to me -- I don't know if it would  
13 help you, I have gotten the easel out. I don't know if it  
14 would help for you to use that or not. I'll let you do  
15 whichever you choose.

16 A. All right. Let me hear the question, first.

17 Q. Let's start with the idea that in the first half  
18 of 2008, as Mr. Echols says, Mr. DeMocker was at a net cash  
19 deficit of \$100,000.

20 A. Did you say at the beginning of 2008?

21 Q. I didn't mean to say that. I meant to say at the  
22 end of the first six months of 2008.

23 A. End of June, early July, at the time of the  
24 murder?

25 Q. Yes.

1 A. Yes.

2 Q. I understand that that is their argument. They  
3 say with the first six months of 2008. What have you found  
4 with respect to that?

5 A. I don't agree with that.

6 Q. Why not?

7 A. I think it's overstated. I think it's wrong. I  
8 don't think it includes other sources of income Mr. DeMocker  
9 had.

10 Q. What sources of income might those be?

11 A. Well, the significant one is tax refunds.

12 Q. What tax refunds?

13 A. As part of his filing of the 2007 tax return,  
14 which we talked about earlier, that he wanted to file early,  
15 was because he calculated or his tax preparer calculated that  
16 he would be entitled to almost \$70,000 of income refunds --  
17 both federal and state. So when he filed his tax return, he  
18 did receive those tax refunds in approximately April of 2008.

19 Q. What was the amount of those tax refunds?

20 A. \$70,000, approximately.

21 Q. Did Mr. Echols include that \$70,000 in his  
22 calculations?

23 A. I don't think he did.

24 Q. If he had included those, what number would he  
25 have had to come up with?

1           A.     He would have come up with a much smaller cash  
2 shortage. That is where maybe I could demonstrate on the  
3 easel how I derived that.

4           Q.     Okay. Let's do that.

5           A.     Do I just go --

6                   MR. HAMMOND: Judge, can you hear him?

7                   THE COURT: I can.

8                   THE WITNESS: Let me break this between 2007  
9 and 2008, the way Mr. Echols did.

10                   I apologize. My handwriting is probably  
11 pretty bad.

12                   Basically, what he started with was cash  
13 from -- basically, from his employment.

14                   MR. BUTNER: Judge, I am going to note an  
15 objection to this. He is embarking on a narrative, and I  
16 don't think there is a question before him that addresses  
17 what he is starting to put on the board.

18                   The question referred to income,  
19 basically for the first the half of 2008, and the return of  
20 \$70,000 from a filed income tax return.

21                   THE COURT: And a cash shortage not as high as  
22 Mr. Echols reviewed. I do need a question.

23                   MR. BUTNER: Thank you.

24                   MR. HAMMOND: Let me back up a little bit.

25           Q.     I read to you from the State's brief that -- the

1 summary of their position. And it does require you, in order  
2 to understand this, does it not, to look back at 2007 and  
3 understand where the numbers came from for the alleged net  
4 cash shortfall for 2007. And I think what I would like you  
5 to do is to show us how the 2007 number was derived so that  
6 we can understand the importance of the 2008 number.

7 A. Okay. I can do that.

8 MR. BUTNER: I take it the question is please  
9 show us how this 2007 number was derived?

10 MR. HAMMOND: As a first step, if that's a  
11 suitable question to you, we will use that.

12 THE WITNESS: I can do that.

13 Mr. Echols said, based on the amount of  
14 income that was paid to Mr. DeMocker in 2007, subtracting  
15 tax withholdings, subtracting other withholdings for Social  
16 Security, medical benefits and those kinds of things, he can  
17 come down to the net amount of cash that Mr. DeMocker  
18 received from his work in 2007, cash that would actually come  
19 into the bank account, and that number was \$170,000.

20 He then subtracted expenses for 2007, and  
21 he said that the expenses would be -- or were \$330,000. When  
22 you subtract the 330 from the 170, you come up with a  
23 shortfall, which the brackets indicate, of \$160,000. So that  
24 means Mr. DeMocker and -- at this time, since he was paying  
25 for the community, Miss Kennedy, would have to come up with a

1 \$160,000 from other sources to make those payments. Okay.

2 BY MR. HAMMOND:

3 Q. Okay. By the way, the number in the State's brief  
4 is probably \$10,000 off from the number that Mr. Echols  
5 actually used.

6                      A.        Yes.

7 Q. The net shortfall at the end of 2007 is identified  
8 as \$160,000?

9	A. Yes.
---	---------

10 Q. Now let's look at 2008.

11           A.       All right. Now 2008 was a little different,  
12       because what Mr. Echols said is that the production level for  
13       Mr. DeMocker in 2008 was reduced by 30-percent from 2007,  
14       that he saw his production level go down, which means that  
15       his income would go down from his employment.

16                               If you take the 170,000, which is for a  
17   full year, and cut it in half -- so we are looking at six  
18   months over here -- you start with \$85,000. That would be  
19   half.

20                   If you subtract 30-percent from that,  
21 because that is what Mr. Echols says the production level  
22 decreased by, you would come up with \$60,000 of actual cash  
23 that is coming into the bank accounts to use to spend on  
24 expenses.

25 What I believe Mr. Echols did, then, is

1 said, well, let's look at the expenses. 330 is for a full  
2 year. Mr. Echols doesn't think the expense has changed at  
3 all in '08, so you take half of this.

4 MR. BUTNER: Objection. Speculation.

5 THE COURT: Overruled.

6 THE WITNESS: If you subtract the 165 in  
7 expenses from the 60,000 of income, you get approximately  
8 \$100,000. Okay. And that is how I believe that Mr. Echols  
9 came up with that number that was included in his testimony,  
10 which also shows up in the State's memorandum.

11 BY MR. HAMMOND:

12 Q. And now with that -- and actually, why don't  
13 you -- just so we have it clear, why don't you put something  
14 on the 2008 to designate that that is just a first half of  
15 the year -- maybe a "6/2008" or whatever you are comfortable  
16 with.

17 A. Say June 30, 2008. Now --

18 Q. So with this foundation, what is wrong with that  
19 analysis?

20 A. Well, what is wrong with the analysis, which seems  
21 to purport that things are getting worse in '08 -- because  
22 this 100,000 shortfall for half of the year versus a 160,000  
23 shortfall for a full year -- is that Mr. Echols forgot that  
24 there was additional cash that came into Mr. DeMocker from  
25 the tax refunds. And so there was \$70,000 of money that came

1 in, in 2008, from tax refunds. So he really had \$130,000 of  
2 available cash in the first six months of 2008 to meet his  
3 expenses.

4 So even if we -- let's assume that the  
5 165,000 is correct -- which I don't know independently  
6 whether it is, but I believe that is what Mr. Echols' number  
7 was -- you can now see that the shortfall was only \$35,000.  
8 And that shortfall is less than half of the shortfall for the  
9 year before.

10 So in my opinion, portraying this  
11 situation to be a more -- a worse situation in terms of cash  
12 position for Mr. DeMocker in '08 versus '07, I think it's  
13 incorrect.

14 Q. In fact, his cash position, as you analyzed it  
15 there, was better in the middle of '08 than it had been at  
16 the end of '07, if you accept Mr. Echols' numbers.

17 A. If I could characterize it myself, I think that --

18 Q. That is what you are here for.

19 A. What it means to me is that in '08 -- for the  
20 first six months of '08, he had less of a cash shortfall that  
21 he had to fund with outside sources than he did in 2007,  
22 based on the income that he received from his business.

23 Q. Okay. The reason as -- at least as the State in  
24 its brief that you looked at focuses on this time period is  
25 to suggest, as they say, that Mr. DeMocker's condition was



1       worsening, that he was upside down and was in -- although,  
2       they don't use the word -- something like an extremely  
3       worsening financial condition. Would you agree with that?  
4       Would you agree that is what the essence of this claim was?

5           A.       Yes. And it also included that he had no liquid  
6       assets to make payments of expenses, which I disagree with.

7           Q.       Why do you disagree with that?

8           A.       Because what is very important here is on July  
9       2nd, on the date of the murder, Mr. DeMocker had over \$9,000  
10      of cash in his bank account.

11          Q.       How do we know that?

12          A.       I looked at the bank statement.

13          Q.       So in fact, Mr. DeMocker did have funds to pay  
14      obligations as they were incurred, at least to some extent?

15          A.       Yes, and he certainly had enough to make a \$6,000  
16      alimony payment.

17          Q.       Let's talk about the alimony payment, because I  
18      think that becomes the next thing that the State talks about  
19      in its brief.

20                    Maybe to move this along, you could  
21      summarize for us your understanding of the back and forth, if  
22      you will, around July 1 and 2, with respect to this first  
23      alimony payment and the exchanges between the parties that  
24      were discussed in the e-mail, so that we have a foundation  
25      for your opinion.

1           A.     Sure. And by the way, it was the second alimony  
2 payment. The first alimony payment was made in early June.

3                   The disagreement was with respect to two  
4 other issues. Clearly the alimony -- the payment was  
5 court-ordered and should be made, but Mr. DeMocker believed  
6 that he was owed money of around \$8500 from the QDRO, related  
7 to his 401-K.

8                   Miss Kennedy also argued that she was  
9 owed about \$2500 with respect to the Chase credit card, which  
10 had accrued some arrears that she didn't believe she should  
11 have to pay off per the divorce settlement.

12                   So those were the three figures that were  
13 being argued about in the early July period.

14           Q.     And the numbers on both sides -- and maybe we  
15 ought to stop and talk about the QDRO for a minute, just so  
16 we are clear about how those numbers arose.

17                   You understand that there was an  
18 agreement with respect to what would happen if there was a  
19 value in the 401-K above \$180,000?

20           A.     Yes.

21           Q.     Can you explain that to us so we have it clearly  
22 in mind, what the understanding was of the parties, as you  
23 saw it?

24           A.     The parties agreed that any amount over \$180,000  
25 would be split evenly between the two.

1           Q.     And as a result of that, however you work out the  
2 arithmetic above \$180,000, some amount of money was going to  
3 be owed from one party to the other?

4           A.     Yes.

5           Q.     That much is clear.

6                     And then there also was an alimony  
7 payment?

8           A.     Yes.

9           Q.     Knowing all of those things, do you agree with the  
10 statement made by Mr. Echols and repeated here in the brief  
11 that at the time of her death, Ms. DeMocker was owed \$8500?

12          A.     Do I agree with the statement?

13          Q.     Yes.

14          A.     Not as a fact, no.

15          Q.     Why not?

16                     MR. BUTNER: Judge.

17                     THE COURT: For clarity of the record, we  
18 ought to refer to her as Ms. Kennedy.

19                     MR. HAMMOND: What did I say?

20                     THE COURT: Ms. DeMocker.

21                     THE WITNESS: Can you show me where in the  
22 record you are referring to?

23 BY MR. HAMMOND:

24           Q.     Yeah. But what I would like you to look at is the  
25 brief of the State that is -- and the pages that we have been

1 looking at are 3 and 4. We are now on Page 4.

2 A. Okay.

3 Q. If you start at the top of the page, I think you  
4 can get a summary of what the State claims that Mr. Echols  
5 said.

6 A. I'm sorry, Mr. Hammond. I may be a little dense,  
7 but I don't see in here where it says Mr. Echols said it.

8 Q. I think this is intended to be a summary. It is  
9 not a direct quotation from Mr. Echols' testimony. It is the  
10 State's summary of what they claim Mr. Echols' position was.

11 A. Okay.

12 Q. And maybe I was cutting a step out of this. I was  
13 trying to move from the testimony, which you have read.

14 A. Yes.

15 Q. To the summary of what the State says the  
16 consequences of that testimony were.

17 A. Okay.

18 Q. So my question was -- I mean, assume for a moment,  
19 that it is -- whether it is Mr. Echols' words or whether it  
20 is the State's position, whether you agree with the summary  
21 that appears here.

22 A. Is there a specific point you want to focus me on?

23 Q. I think so. I think the question about the  
24 positions taken by both parties here, with respect to the  
25 exchange of money.

1 First of all, you reviewed all of the --  
2 maybe not all -- you reviewed the e-mail communications back  
3 and forth between Mr. DeMocker and Miss Kennedy.

4 A. Yes.

5 Q. You know that they had a disagreement about which  
6 checks were going to go in which directions at which time.

7 A. Yes.

8 Q. Maybe that is an easier way to do this, and I  
9 think you summarized it before, but Mr. DeMocker had a  
10 payment to make his second alimony payment of a little over  
11 \$6,000?

12 A. I think it is exactly 6,000.

13 Q. Okay. And Miss Kennedy had a payment to make to  
14 Mr. DeMocker that Mr. DeMocker believed was over \$8,000?

15 A. Well, Mr. DeMocker's position was that she owed  
16 him \$8500 or so.

17 Miss Kennedy's position was she did not  
18 owe him that much. So there was a disagreement about what  
19 the amount of the payment would be.

20 Q. And I think there was some suggestion that  
21 Mr. DeMocker was, in fact, unable to make that payment --  
22 that is, the alimony payment -- that unless she made the  
23 payment to him, he would not be even able to make a payment  
24 to her?

25 A. Yes. I think that is the suggestion.

1 Q. Okay. That is what I would like to focus on.

2 Looking at everything that you have seen  
3 here, do you see any basis for concluding that the financial  
4 situation had so deteriorated that unless Mr. DeMocker  
5 persuaded Miss Kennedy to give him \$8500, he could not make  
6 the alimony payment?

7 A. No. I just indicated that he had 9,000 or some  
8 dollars in the bank account. He certainly could have cut a  
9 check for \$6,000.

10 Q. And understanding that there was a dispute with  
11 respect to the amount of the QDRO payment, can you  
12 characterize that dispute as either a good-faith difference  
13 of opinion or as an attempt to perpetrate a fraud by  
14 Mr. DeMocker?

15 A. Well, I don't think there was anything in terms of  
16 perpetrating a fraud, and I have not heard anybody allege  
17 that in this case. It was a difference of opinion as to what  
18 the agreement was with respect to that particular payment and  
19 whether the fact that the market value of that account went  
20 down prior to her cashing it out should be something held  
21 against Mr. DeMocker or whether it should be held against  
22 Miss Kennedy. That was, in essence, the argument.

23 Q. And I know you can't foretell the future, but I  
24 think it is fair to ask you what in the ordinary course you  
25 would have expected to have occurred had Miss Kennedy not

1 died on the 2nd of July, with respect to their interlocking  
2 or related financial commitments?

3 MR. BUTNER: Objection. Speculation.

4 THE COURT: Overruled.

5 THE WITNESS: Well, I would think they would  
6 have to have resolved it at some point. In some fashion or  
7 another, the two would have to have gotten together and  
8 resolved that issue.

9 BY MR. HAMMOND:

10 Q. Can you see from any of the things that you have  
11 seen here any indication that that issue was so serious or  
12 so, so important that this issue, as opposed to the countless  
13 other issues that they disagreed about, would be a cause for  
14 killing someone?

15 MR. BUTNER: Again, Judge, speculation and  
16 lack of foundation.

17 THE COURT: I will sustain that question.

18 MR. HAMMOND: Okay.

19 MR. BUTNER: Thank you.

20 BY MR. HAMMOND:

21 Q. The position taken by Mr. Echols here, at least as  
22 it appeared in his presentation, was that this dispute was  
23 the final act in a series of events that caused -- and cause  
24 here is important -- caused Mr. DeMocker to commit a murder  
25 for pecuniary gain.

1 Do you see a significant pecuniary gain  
2 that would have been realized by the homicide that would not  
3 have been in the realm of the possible had she not been  
4 murdered?

5 MR. BUTNER: Objection. Vague and ambiguous.  
6 Lack of foundation.

7 What is a significant pecuniary gain?  
8 Calls for speculation.

9 THE COURT: Overruled.

10 THE WITNESS: Well, no, I don't, especially  
11 with respect to the claim that he would save \$8500 a month in  
12 the situation of her death.

13 BY MR. HAMMOND:

14 Q. And why do you come to that conclusion?

15 A. Well, because as a result of her death, he  
16 actually now became obligated on the mortgage and the second  
17 lien on the Bridle Path house, and that was approximately  
18 \$3500. So he doesn't have to pay the \$6,000 a month in  
19 alimony, but he is now obligated to pay on a mortgage of  
20 \$3500. So that amount is cut down to about \$2500.

21 And I think there is also a question with  
22 respect to the \$2500 on the Chase credit card, whether he is  
23 still obligated to pay that as a result of her death. So I  
24 don't think he necessarily gets out of paying \$8500 with  
25 respect to her death.



1                   And then if you take the tax effect, in  
2 terms of the alimony, it is reduced by another 40-percent.

3           Q.       So, which means that the total amount in dispute  
4 here, at least on this issue, might be down -- does that make  
5 it down in the \$1500 range?

6           A.       Yes.

7           Q.       I want to go back to what you said about the  
8 mortgage payments. If you turn back to Page 3 of the State's  
9 memorandum, there is a discussion in the last paragraph on  
10 that page about the mortgages on the Bridle Path property.

11                   And I think you have already answered the  
12 question, but would the murder of Carol Kennedy have helped  
13 Mr. DeMocker's financial condition with respect to the  
14 mortgages on that property?

15          A.       No. It actually would hurt him.

16          Q.       And why is that?

17          A.       Because it would put him directly as the direct  
18 obligator to making the payment on the mortgage as opposed to  
19 being secondary.

20          Q.       Do you know whether or not that, in fact, is what  
21 happened?

22          A.       I believe that is what happened, yes, for some  
23 period of time.

24          Q.       Is there anything about that consequence -- I  
25 mean, they are both signatories in a community property

1 relationship on a piece of property; right?

2 A. Yes.

3 Q. Is there anything unforeseeable about the  
4 consequence of the elimination of one payor on a mortgage or  
5 a deed of trust on a piece of property? Isn't this -- I  
6 don't want to over simplify -- isn't this just self-evident?

7 A. Yes.

8 Q. The obligation doesn't go away.

9 A. That's right.

10 Q. The surviving spouse, or in this case the former  
11 spouse, continues to have those responsibilities?

12 A. Yes, and I think that was as a result of the  
13 divorce where Mr. DeMocker could not take himself off of the  
14 mortgage, because of Miss Kennedy's low income. He had to  
15 remain on the mortgage.

16 Q. And you know that in some divorce proceedings  
17 parties do attempt to renegotiate the terms of existing  
18 mortgages, deeds of trust, so that one party is taken off of  
19 that responsibility?

20 A. Sure.

21 Q. And you -- tell us. I mean, some people succeed  
22 at that and some people don't; right?

23 A. Yes. It depends on their own financial  
24 situations.

25 Q. And it depends on the lender?

1 A. Sure.

2 Q. And what the lender sees about the value of the  
3 property and the assets of the price?

4 A. That's right.

5 Q. And that could have been done here, but it, in  
6 fact, was not at the time of the divorce in this case?

7 A. That's correct.

8 Q. So he remained obligated -- any doubt in your mind  
9 that he knew he remained obligated?

10 A. No.

11 Q. Indeed in the correspondence back and forth, there  
12 are indications that, in fact, they both knew he remained  
13 obligated?

14 A. Yes.

15 Q. What about credit card debt? Does the death of  
16 Carol Kennedy eliminate credit card debt?

17 A. If he is on the card or it was a community debt, I  
18 don't believe it does.

19 Q. You don't think that the credit card company would  
20 say, well, she's deceased, so the debt is eliminated?

21 A. Right. I don't think -- it would not, if they can  
22 come after the husband or the former husband.

23 MR. HAMMOND: Your Honor, would you give me a  
24 minute here?

25 THE COURT: Yes, sir.

1 BY MR. HAMMOND:

2 Q. Mr. Curry, I asked my colleague, here, to pull out  
3 the divorce decree. Before we conclude this, I want to be  
4 sure that we have included in our -- in your chart, here, the  
5 income that Mr. DeMocker was entitled to and expecting as a  
6 result of that divorce decree.

7 We have talked about the tax benefits,  
8 but there is certain other income that I think I forgot to  
9 ask you about with respect to the QDROs.

10 A. Okay.

11 Q. Have you looked at those?

12 A. Yes.

13 Q. Let me put in front of you Exhibit 140, that talks  
14 about the -- this is the consent decree entered on  
15 May 28, and there are provisions that deal with the TIAA-CREF  
16 QDRO.

17 A. All right.

18 Q. Are you familiar with those particular portions of  
19 the divorce decree?

20 A. Yes. On the QDRO?

21 Q. Yeah.

22 A. And how the proceeds over \$180,000 would be split?

23 Q. Are there other distributions beyond the \$180,000  
24 that was supposed to come to Mr. DeMocker?

25 A. Well, for his benefit, there was \$20,000 that was

1 going to reduce his UBS credit card.

2 Q. And would that reduction be a relevant addition to  
3 this chart?

4 A. It certainly would impact his financial situation  
5 in 2008. Yes, it would lower his overall debt by \$20,000.

6 MR. SEARS: Could we have a moment, Your  
7 Honor?

8 MR. HAMMOND: Let me just make sure that we  
9 have this correct.

10 May I approach, Your Honor?

11 THE COURT: You may.

12 BY MR. HAMMOND:

13 Q. The divorce decree appears to result in a transfer  
14 of assets. \$180,000 that goes in one direction and then what  
15 appears to be possibly more than \$20,000 that goes in  
16 Mr. DeMocker's direction.

17 Is that what your understanding is?

18 A. Yes. There was monies from the QDRO that were to  
19 pay off various credit cards, including the UBS credit card.  
20 I think there is a Bank of America credit card and the Chase  
21 card.

22 Q. And those would then be part of the asset base of  
23 Mr. DeMocker, at least reducing his liabilities?

24 A. Reducing liabilities, yes.

25 Q. And is there -- and maybe you just don't know the

1 answer to this, and if you don't, then tell me -- but was  
2 there, in fact, going to be cash distributions to  
3 Mr. DeMocker as a result of the exchange of QDROs?

4 A. Cash distributions? That, I don't recall, besides  
5 the amount over the 180,000.

6 Q. Okay.

7 A. Is it proper for me to clarify an answer if I  
8 recall something?

9 Q. Well, I am struggling, because I believe there is  
10 a part of this that you've talked to us about that was in the  
11 record that we haven't gotten to.

12 A. May I clarify?

13 Q. You may, as far as I am concerned.

14 MR. BUTNER: Objection, Judge. There isn't a  
15 question before the witness. If they need to take a little  
16 break, I have no objection to that. I just don't like  
17 freelancing it on the record.

18 MR. HAMMOND: Well, I am happy to take a break  
19 so that we don't have Mr. Butner uncomfortable with my  
20 freelancing.

21 THE COURT: I will take a break if you prefer  
22 that. But if you want to simply pose another question, we  
23 can do that.

24 We will take a break, apparently.

25 (Brief recess.)

1 THE COURT: The record reflects the presence  
2 of all counsel and the defendant. Still on direct with  
3 Mr. Curry.

4 Mr. Hammond.

5 MR. HAMMOND: Thank you, Your Honor.

6 DIRECT EXAMINATION CONTINUED

7 BY MR. HAMMOND:

8 Q. Before we broke, we were talking about  
9 Mr. DeMocker's financial condition and his expectations as of  
10 the middle of 2008. And we started to ask about whether  
11 there were other expectations, and you had said there was  
12 something you wanted to add, and we thought it would be best  
13 to make that clear.

14 Can you go back now with reference to the  
15 divorce decree itself, the settlement decree, to explain what  
16 you had in mind with respect to the change of QDROs.

17 A. Well, you had asked me about the QDRO, and I was  
18 talking about the husband's QDRO. I had forgotten about the  
19 wife's -- Miss Kennedy had two small 401-K IRA accounts that  
20 were QDRO'd to Mr. DeMocker. So that would have provided  
21 additional cash and funds to him at around the same time in  
22 June of 2008 or very soon after that.

23 Q. Okay. What do we know about -- is there a record  
24 that you have in your materials that will tell us anything  
25 about the value of those QDROs? What the dollar amounts are?

1           A.     I have seen financial statements and schedules in  
2 the e-mails prepared by Mr. DeMocker, and I think responded  
3 by Miss Kennedy, where they talk about 16- to \$20,000, in  
4 that range.

5           Q.     So at least in terms of expectations, on one of  
6 those QDROs there would be a number added to this list of  
7 between 16- to \$20,000?

8           A.     Well, it is a number -- it is cash that  
9 Mr. DeMocker would have available to him to pay and meet  
10 expenses.

11          Q.     And there might be a second QDRO there that may  
12 also have some value in it?

13          A.     The TIAA QDRO? Yes. Whatever was in that  
14 account.

15          Q.     And you don't know the amount of what that is?

16          A.     I don't recall. I have seen it somewhere, but I  
17 don't recall.

18          Q.     But those items collectively were part of the  
19 expectation that Mr. DeMocker would receive, growing out of  
20 the settlement of the divorce?

21          A.     Yes.

22          Q.     In the end of May 2008?

23          A.     Yes.

24          Q.     Okay. When we talked about this difference of  
25 opinion that Carol Kennedy and Mr. DeMocker had about what I



1 call the overage -- about the amount over \$180,000, how long  
2 had that dispute being going on, based on your review of the  
3 records -- e-mails back and forth between the parties?

4 A. Certainly in June it was going on, because  
5 Mr. DeMocker was asking for his share of that overage.

6 Q. So would you agree that it would be misleading to  
7 suggest that this was an issue that had just arisen around  
8 the time of Carol Kennedy's death, July the 1st or 2nd?

9 A. Yes.

10 Q. Okay. I would like to ask you about one other  
11 thing that Mr. Echols emphasized in his testimony. He had  
12 looked at Mr. DeMocker's income from his business, his  
13 receipts, if you will, from the commissions he earns in his  
14 work, and had pointed out that Mr. DeMocker's income had  
15 dropped precipitously in the first six months of 2008.

16 Had you looked at those numbers?

17 A. Yes.

18 Q. Could you help us put that in context? We have  
19 got a series of tax returns that I think you looked at --

20 A. Yes.

21 Q. -- that go back several years before 2007?

22 A. That's correct.

23 Q. And that includes 2007 and 2008?

24 A. Right.

25 Q. Can you summarize for us, year by year, what that

1 picture was so that we know what his income was in each of  
2 those years?

3 A. I can tell you the exact number, or can I  
4 summarize it. From 2004 through 2008, Mr. DeMocker's income  
5 was approximately 300- to \$350,000 a year.

6 Q. And then in 2007, he had a much better year?

7 A. Yes. His income did spike in 2007.

8 Q. And then it did drop, to some extent, in the first  
9 half of 2008?

10 A. It had, yes.

11 Q. What inferences do you think are reasonable to  
12 draw from that plane, if you will, from 2004 up in 2007 and  
13 then back down in 2008?

14 A. Well, income in this kind of a business can go up  
15 and down. It is going to be dependent on a lot of different  
16 factors, including the marketplace, since it is an investment  
17 kind of activity. So it is going to be affected by things in  
18 the market, as well as one's own work and abilities.

19 In 2007 -- or 2008, based on his first  
20 half-year performance and what happened the rest of the year,  
21 his income is basically in line with what he was doing from  
22 2004 through 2006. So 2007, when it spiked up, is somewhat  
23 of an aberration from the other years.

24 Q. Would it be unfair for someone in Mr. DeMocker's  
25 business to have believed in June and July and May of 2008

1 that their business would remain good, would increase in the  
2 future?

3 A. Well, I think he would base it on his own track  
4 record and abilities. What he was actually thinking, I don't  
5 know.

6 But I do know that July tends to be a  
7 good month in their business -- every three months tends to  
8 be good. And so July would generally be expected to be a  
9 higher paying month for him.

10 Q. So then do you then not draw the same inference  
11 that Mr. Echols seemed to draw, that the decrease in his  
12 income over the first months of 2008 was a sign of  
13 approaching desperation, financially, for this man?

14 A. No, I don't draw that inference, because of all  
15 the factors that we talked about -- not only the income and  
16 the availability of other funds that he had. I would not  
17 draw that conclusion that as of July 2nd he was in a  
18 desperate financial position.

19 Q. And I know, Mr. Curry, that you can't be the  
20 person who ultimately decides what anyone's motive is, but I  
21 want to ask you this from a forensic financial analysis  
22 standpoint and all of the materials that you have looked at.  
23 Do you see circumstances that would cause a reasonably  
24 objective person to believe that a rational opportunity or  
25 rational course of action would be homicide?

1 MR. BUTNER: Objection, Judge. Calls for  
2 speculation. Lack of foundation. And it is also vague and  
3 ambiguous.

4 MR. HAMMOND: Your Honor, I wouldn't have  
5 asked it if Mr. Echols had not offered precisely that  
6 opinion. It seems to me if Mr. Echols is going to make those  
7 kinds of opinions, as he certainly did, we ought to hear from  
8 Mr. Curry whether he sees a basis.

9 MR. BUTNER: And it is argumentative.

10 THE COURT: I will sustain the objection. To  
11 the extent you wish me to strike any similar opinion with  
12 regard to what Mr. Echols testified to, I will entertain  
13 that.

14 MR. HAMMOND: Well, there are numbers of  
15 opinions, and we will provide you with a list of those, both  
16 in his written opinion and in his testimony.

17 Your Honor, I have no further questions  
18 for Mr. Curry.

19 THE COURT: Mr. Butner.

20 CROSS-EXAMINATION

21 BY MR. BUTNER:

22 Q. Mr. Curry, you indicated that you reviewed e-mails  
23 as part of your research to prepare to testify; is that  
24 correct?

25 A. As part of the work I've done, yes.

1 Q. Did you review Exhibit 138 -- in fact, you might  
2 even have it right up there. Did you review that particular  
3 bunch of e-mails as part of your preparation to testify?

4 A. I have reviewed these e-mails, not necessarily in  
5 anticipation of testimony, but as part of my forensic  
6 investigation, yes.

7 Q. Did you review the e-mails between Mr. DeMocker  
8 and Carol Kennedy in the month leading up to the death of  
9 Carol Kennedy?

10 A. Yes, I did.

11 Q. So you must have reviewed that e-mail that took  
12 place -- basically e-mail correspondence between them,  
13 already admitted into evidence as Exhibit No. 65.

14 MR. BUTNER: May I approach, Your Honor?

15 THE COURT: You may.

16 THE WITNESS: Yes, I have seen this e-mail.

17 BY MR. BUTNER:

18 Q. Okay. And this is an e-mail where they are  
19 discussing the distribution of the QDRO -- Mr. DeMocker's  
20 QDRO; is that correct?

21 A. Yes, it is discussed in there.

22 Q. And they're talking about -- that the QDRO wasn't  
23 as much as it was anticipated to be; right?

24 A. Right.

25 Q. It was anticipated to be about \$197,000, and Carol

1 was telling Mr. DeMocker that it was actually \$186,000. Do  
2 you remember that?

3 A. Yes. It was not really anticipated to be, it was  
4 \$197,000 at one point. That is Mr. DeMocker's position.

5 Q. It was at one point, but when it was distributed  
6 it was not 197, it was 186; right?

7 A. That's true.

8 Q. They had hoped they would get 197,000 now, and  
9 anything over 180 they would split in half?

10 A. Yes, that was the agreement.

11 Q. Right. But actually it turned out to be 186, and  
12 so they were squabbling over \$6,000; right?

13 A. No.

14 Q. That was the overage over the 180, wasn't it?

15 A. That was the overage, but that was not what  
16 Mr. DeMocker was squabbling about.

17 Q. Right. He was saying that he wanted more; right?

18 A. He was saying that the reason it had dropped was  
19 her fault because she delayed and did not act on getting it  
20 liquidated.

21 Q. He blamed her for the drop in the QDRO, right, in  
22 his QDRO?

23 A. Yes.

24 Q. And he also told her that he couldn't afford to  
25 pay her alimony this month without her paying that to him,

1 didn't he?

2 A. That is not true. He does not say that.

3 Q. What did he say right down here where it says --  
4 let me see if I can draw your attention to that line right  
5 there. What does that say right there?

6 MR. HAMMOND: Your Honor, I don't have that  
7 particular exhibit. May I look --

8 THE COURT: You may.

9 MR. BUTNER: Exhibit 65.

10 MR. HAMMOND: I just don't have it here.

11 THE WITNESS: I have a copy. If I could use  
12 my own, maybe that would help.

13 MR. HAMMOND: He has his copy in front of him.

14 Do you want to ask a question?

15 MR. BUTNER: I did.

16 Q. What does it say in that line?

17 A. The line that you pointed to, that you are  
18 referring to?

19 Q. Yes, sir.

20 A. It says: "I simply cannot float a full payment to  
21 you this month without your payment to me."

22 It does not say what you suggested it  
23 said.

24 Q. Okay. What did you understand Mr. DeMocker to  
25 mean when he said "I simply cannot float you a full payment

1 this month without your payment to me"?

2 A. Well, it can be interpreted to mean that he  
3 doesn't want to pay her something when she owes him  
4 something, which would be a float. It does not say -- and if  
5 he wanted to say I can't afford to pay you, he could have  
6 said "I simply cannot afford to pay you."

7 Q. So you interpret it to mean that he just simply  
8 won't make a payment to her unless she makes a payment to  
9 him?

10 A. I think that is exactly his position here. If you  
11 read the entire e-mail, that is what he is saying.

12 Q. I see. Okay. Thank you.

13 And just above that, he tells her -- and  
14 you have got your copy; right?

15 A. Yes, I do.

16 Q. "If you will not exchange checks, and in the  
17 absence of any other agreement between us, I will need to  
18 deduct the balance you owe me from your next two monthly  
19 support payments"; is that correct?

20 A. That is what he says.

21 Q. He is telling her that he is not going to honor  
22 the court order; right?

23 A. I don't know if he is saying that. He is saying I  
24 will pay you, but I am going to deduct what you owe me.

25 Q. He does have a court order that requires him to



1 pay \$6,000 a month in spousal maintenance; right?

2 A. Yeah, I think he does, yes.

3 Q. And he is telling her he is going to deduct the  
4 balance you owe me from the next two monthly support  
5 payments?

6 A. That's what he said he was going to do.

7 Q. That is in contravention of the court order; isn't  
8 it?

9 A. I think you could probably make that argument,  
10 yes.

11 Q. You think it is, don't you?

12 A. Well, it's -- I think that certainly would be a  
13 position one could take. I don't know legally whether that  
14 is in contradiction to the court order.

15 Q. And she, in this e-mail, told him that she is not  
16 going to give him a check in any amount; right?

17 A. That is what she says.

18 Q. Your testimony was that actually instead of -- if  
19 I understood it correctly -- instead of \$100,000 -- instead  
20 of being \$100,000 in arrearages, so to speak, as of June 30  
21 of 2008, it was only \$35,000; is that correct?

22 A. Well, this is for a period of time, so during the  
23 six months of 2008, his income and cash he had available to  
24 him through his business and through his work was -- if you  
25 believe the number that Mr. Echols said was his expenses,

1       which I accepted for purposes of this, he was \$35,000 short  
2       of those expenses.

3             Q.       He had a \$35,000 shortfall, I think is what you  
4       called it; right?

5             A.       I think is what Mr. Echols calls it, as well.

6             Q.       In fact, Mr. DeMocker was really trying hard to  
7       get that 2007 income tax return filed, because he wanted that  
8       the \$70,000 return; is that correct?

9             A.       Yes. The refund?

10            Q.       The refund.

11            A.       Yes, I think that is right.

12            Q.       And he needed that, because he was running way  
13       behind on his expenses; right?

14            A.       Well, I don't have a day-by-day analysis to answer  
15       that question, so I don't know if he felt that he needed it  
16       to make those expenses. I think he felt he wanted the cash,  
17       as most people probably would.

18            Q.       Well, if he hadn't gotten that \$70,000 income tax  
19       refund from the IRS, he would have had a \$100,000 shortfall;  
20       correct?

21            A.       Based on those expenses that had been estimated by  
22       Mr. Echols, yes, that's correct.

23            Q.       And you accept those for the purposes of your  
24       opinion; isn't that correct?

25            A.       For the purposes of this, yes, I did.

1 Q. Similarly, you accept the fact that he had a  
2 \$160,000 shortfall in 2007?

3 A. For purposes of this analysis, I accepted that.

4 Q. That is the best income year that Mr. DeMocker  
5 ever had; isn't it?

6 A. That's true.

7 Q. He spiked his income that year; right?

8 A. His income did go up, yes.

9 Q. Did you calculate the percentage of what his  
10 income went up?

11 A. I did not.

12 Q. Would you say that it had increased by at least  
13 50-percent?

14 A. Probably close to that.

15 Q. By 50-percent his income had increased, and he  
16 still ran a \$160,000 shortfall; right?

17 A. Based on those expenses, all the expenses he had  
18 to pay for his children and things like that, yes.

19 Q. Would it be fair to state in the year 2007,  
20 Mr. DeMocker was living beyond his means?

21 A. They certainly spent everything that they made.  
22 That is true.

23 Q. And actually, spent more than he made; right?

24 A. In that year. But of course he has assets that he  
25 had from prior years to pay for that.

1 Q. So that \$160,000 shortfall, that indicates he is  
2 living beyond his means; correct?

3 A. It indicates for that year he incurred more  
4 expenses than his income would support.

5 Q. And the same was true in 2008; right?

6 A. That's true.

7 Q. Once again, he continued to live beyond his means;  
8 right?

9 A. Well, I think he lived at his means.

10 Q. At his means, and then he had to go into debt some  
11 in order to keep his lifestyle going; right?

12 A. Well, he did go into debt, and I think to his  
13 family, yes.

14 Q. And in fact, yeah, you just told us about that.  
15 He borrowed money from his family; is that correct?

16 A. I think that is true. I have not seen any  
17 documentation of that.

18 Q. Based upon the e-mails that you reviewed; right?

19 A. Yes.

20 Q. He indicated he borrowed \$50,000 just to keep  
21 going; right?

22 A. To make the payments he was required to make, yes.

23 Q. So again, he is living beyond his means; right?

24 A. Well, I think that is argumentative. But he  
25 certainly is spending everything he brings in, yes.

1           Q.     In your earlier testimony, you indicated that this  
2     dispute that Mr. DeMocker and Carol Kennedy were having on or  
3     about July 1st and July 2nd of 2008 about the distribution of  
4     the QDRO, that it was misleading to say that that had just  
5     arisen; is that right?

6           A.     I think it had risen before that date, yes.

7           Q.     Do you recall when it had arisen before that date?

8           A.     Not the exact date, no.

9           Q.     Well, the QDRO was something that had been  
10    resolved in the divorce decree; right?

11          A.     Yes.

12          Q.     So it basically was resolved on May 28 about what  
13    was going to happen with the QDRO; right?

14          A.     Yes.

15          Q.     And you've already testified about how it was  
16    going to be paid over to Carol Kennedy; right?

17          A.     Yes.

18          Q.     And she was responsible for the taxes; right?

19          A.     Yes.

20          Q.     Did you calculate how much in taxes she was going  
21    to have to pay?

22          A.     No.

23          Q.     Didn't figure that out at all?

24          A.     No.

25          Q.     But she indicated to Mr. DeMocker that she didn't

1 have enough money to pay the taxes and pay the credit card  
2 bills and also come up with money to him; right?

3 A. I think that is what she said.

4 Q. And so this dispute, although it maybe had arisen  
5 during the course of the divorce, it was really getting  
6 pretty acute, so to speak, as of July 1st and July 2nd of  
7 2008; wouldn't that be fair to say?

8 A. Well, they were certainly arguing about it on  
9 July 1st and July 2nd, that is true.

10 Q. And in fact, he had demanded that she give him a  
11 check for approximately \$8300; right?

12 A. Something like that.

13 Q. And she had said not only am I not giving you a  
14 check at all, but you need to give me \$8500; right?

15 A. Right.

16 Q. So they are having a pretty serious dispute over  
17 money at that point in time; weren't they, Mr. Curry?

18 A. They were having a dispute over money, yes.

19 THE COURT: Is this a good pausing time,  
20 Mr. Butner? We are two minutes to 12:00.

21 MR. BUTNER: Yeah, that would be an excellent  
22 time, Judge. Thank you.

23 THE COURT: Do you want to resume at 1:15 or  
24 1:30?

25 MR. BUTNER: 1:30, please.

1 THE COURT: Any problem from the defense side?

2 MR. HAMMOND: None, Your Honor.

3 THE COURT: Resume at 1:30. Stand in recess

4 to 1:30.

5 (Whereupon, a recess was taken at 10:52 a.m.

6 to resume at 1:30 p.m. of the same day.)

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NOVEMBER 19, 2009  
1:33 P.M.

CHRONIS HEARING

APPEARANCES:

FOR THE STATE, MR. JOE BUTNER.

FOR THE DEFENDANT, MR. JOHN SEARS, MR. LARRY  
HAMMOND, AND MS. ANN CHAPMAN.

THE COURT: We are continuing in the  
cross-examination of the witness, and Mr. DeMocker is here,  
all three of his counsel, and Mr. Butner for the State.

Mr. Butner.

MR. BUTNER: Thank you.

CROSS-EXAMINATION CONTINUED

BY MR. BUTNER:

Q. Mr. Curry, going back to examination, you were  
talking about the fact that -- if I understood you  
correctly -- that after Carol Kennedy was killed, that  
Mr. DeMocker then became, in essence, solely responsible for  
the Bridle Path mortgages; is that correct?

A. I believe that was correct.

Q. What was the total monthly amount of those  
mortgages? Do you recall?

A. I think it was around \$3500.

Q. And were there other payments, also, that he  
became solely responsible for as a result of her death?

A. Possibly the credit card -- the Chase credit card.



1 Q. The Chase credit card. That was discussed, of  
2 course, during the divorce; right?

3 A. Yes.

4 Q. And how much was that monthly payment?

5 A. I would have to look at something to refresh my  
6 memory.

7 Q. Does the amount 2500 a month refresh your  
8 recollection?

9 A. No. I think you are referring to the primary  
10 mortgage on the Bridle Path property.

11 You are talking about the arrears on the  
12 Chase credit card?

13 Q. Well, that was a discussion. That was a dispute  
14 between Ms. Kennedy and Mr. DeMocker in those e-mails of  
15 July 1st and July 2nd; right?

16 A. Yes. That was a balance that she was claiming he  
17 owed her.

18 Q. Right. She was saying that he needed to pay that  
19 \$2500 in arrears, and he basically was indicating he was not  
20 going to pay that.

21 A. Right.

22 Q. Well anyway, what I am getting at, if I understood  
23 your testimony, you concluded that Ms. Kennedy's death only  
24 saved Mr. DeMocker \$1500 a month, basically, in monthly  
25 out-go, so to speak?

1 A. Yes.

2 Q. That is what you said?

3 A. That's what I said. After taxes.

4 Q. That is what I thought I heard. I wanted to make  
5 sure of that.

6 Also, if I understood your testimony, you  
7 had reviewed Mr. DeMocker's 2007 income tax return; is that  
8 right?

9 A. Yes.

10 Q. And you also reviewed the amended financial  
11 affidavit that he filed with the court?

12 A. Yes.

13 Q. Okay. In the amended financial affidavit he filed  
14 with the court, he was claiming a payment of \$1,098 per month  
15 on his BMW 550i; correct?

16 A. Yes. I believe that's correct.

17 Q. And he ultimately claimed that as an alimony  
18 payment to Carol Kennedy; right?

19 A. No, not all of it.

20 Q. How much did he claim?

21 A. 50-percent.

22 Q. 50-percent as alimony to Carol Kennedy?

23 A. Yes.

24 Q. Even though he was the only one that used that  
25 car?

1 A. Yes.

2 Q. And they were separated?

3 A. Yes.

4 Q. In the midst of a divorce?

5 A. Yes.

6 Q. And would it be fair to state that the reason that  
7 Mr. DeMocker really wanted to file those income tax returns  
8 right away for 2007 was so that he could get that income tax  
9 refund?

10 A. Well, I think that was certainly one motivation,  
11 sure.

12 Q. And there was an on-going dispute between Carol  
13 Kennedy and Mr. DeMocker as to he shouldn't do that because  
14 she thought the numbers weren't accurate; right?

15 A. Yes.

16 Q. And ultimately, he just went ahead and filed it  
17 married, filing separately; right?

18 A. That's right.

19 Q. And as a result of that, the refund, although it  
20 was somewhat less than it would have been, came directly to  
21 him; right?

22 A. The refund that he would be entitled to based on  
23 that return, yes. Sure.

24 Q. It was less than what they would have gotten  
25 together had they filed jointly; isn't that correct?

1           A.     I think that's right.

2           Q.     By a few thousand dollars. Not a large amount,  
3 but a few thousand dollars?

4           A.     Yes. Something maybe less than 2,000.

5           Q.     But by filing separately, that refund came only to  
6 Mr. DeMocker, and Carol Kennedy didn't get any of it; right?

7           A.     That's right, because it was based on his income  
8 and withholdings.

9           Q.     And then he took that income -- that refund, and  
10 he paid her alimony with it; didn't he?

11          A.     Well, I think he probably paid a lot of things  
12 with it.

13          Q.     But he paid her alimony with it.

14          A.     Well, money is fungible, so it is kind of hard to  
15 pinpoint exactly where funds are spent on.

16          Q.     But he is running a \$100,000 shortfall if he  
17 doesn't get that \$70,000 refund; right?

18          A.     Based on the expenses that Mr. Echols estimated.

19          Q.     And he takes that \$70,000 when he gets it from the  
20 IRS -- by the way, when did he get it?

21          A.     Late March or April.

22          Q.     And then he used that money and he paid expenses;  
23 right?

24          A.     Yes, he did.

25          Q.     One of which was spousal maintenance to Carol

1 Kennedy?

2 A. Probably things would be included in that, yes.

3 Q. And you testified that you didn't talk to  
4 Mr. Raider about any advice that he had given to  
5 Mr. DeMocker.

6 A. That's correct.

7 Q. But you listened to a recorded interview between  
8 Mr. Raider and Mr. Echols and Detective McDormett; is that  
9 correct?

10 A. No.

11 Q. What did you do in regard to Mr. Raider? Did you  
12 look at a transcript?

13 A. I read the transcript.

14 MR. BUTNER: Do you have a transcript,  
15 Mr. Sears or Mr. Hammond?

16 MR. SEARS: No.

17 MR. BUTNER: I haven't been provided a copy of  
18 that.

19 MR. HAMMOND: I am sure we made a transcript  
20 at some point. That is what we were doing with a number of  
21 things that were given to us only as a recording. But I  
22 can't tell you whether we have it anyplace where we could get  
23 to it. But I am sure if Mr. Curry read it, then we provided  
24 it to him.

25 MR. BUTNER: Would you give me a copy of that

1 interview?

2 MR. HAMMOND: Well, I would sure like to say  
3 no, but in the interest of moving things along, we will get  
4 you one.

5 MR. BUTNER: Thank you very much, Mr. Hammond.  
6 I appreciate that.

7 Q. In that transcript, did you read where Mr. Raider  
8 told Mr. Echols and Detective McDormett that he did not  
9 review the temporary orders document?

10 A. I don't recall reading that specific conversation.

11 Q. Do you recall reading where Mr. Raider told  
12 Mr. Echols and Detective McDormett that he did not review the  
13 numbers provided to him by Mr. DeMocker to make sure that  
14 they comported with the temporary orders document?

15 A. I think that is probably accurate in terms of what  
16 he said about the numbers -- the specific numbers.

17 Q. He didn't compare the numbers to make sure that  
18 they complied with the court order; right?

19 A. I don't know that for a fact, but I don't think he  
20 said in the transcript that he did that.

21 Q. Right. He said he didn't do that; isn't that  
22 correct?

23 A. I don't have a recall of the exact language.

24 Q. And do you recall that Mr. Raider said that he was  
25 simply provided with the numbers by Mr. DeMocker and he

1 plugged them into the tax return?

2 A. I don't know if he said he simply was -- I think  
3 he filled out the tax return based on the numbers he was  
4 provided by Mr. DeMocker. That is not what I used the  
5 transcript for.

6 Q. You know, we had this discussion earlier on in  
7 your testimony, and you testified that, basically, when you  
8 have a liability and you have a balance sheet, you have a  
9 liability associated with an asset, you put the asset on one  
10 side and the liability on the other; is that correct?

11 A. Yes. At a certain point in time, you would do  
12 that.

13 Q. Right. And that is why they call it a "balance  
14 sheet," isn't it?

15 A. Well, your assets have to balance to your  
16 liabilities and your equity.

17 Q. Right. And you were talking about the Bridle Path  
18 mortgage. The asset would be Bridle Path, right, the  
19 residence and property?

20 A. Yes.

21 Q. And the mortgage would be the liability, the debt  
22 associated with that property; right?

23 A. Yes.

24 Q. And so when you have a loan like that, you have a  
25 loan, and then you have an asset upon which the loan is

1 based; correct?

2 A. You can, and there may be situations where you  
3 don't. In case of a house and a mortgage, yes.

4 Q. And you indicated that banks -- for example, we  
5 were talking earlier on in this case about employee  
6 forgivable loans and books of business.

7 Do you remember that discussion?

8 A. Yes.

9 Q. Banks don't like to loan money unless they have  
10 got a tangible asset; right?

11 A. For collateral, that's true.

12 Q. Right. And that is an asset that they can  
13 foreclose upon; right?

14 A. Yes.

15 Q. That doesn't mean that other entities don't loan  
16 money based upon intangible assets; does it?

17 A. They possibly might.

18 Q. You indicated that the intangible asset that  
19 Mr. DeMocker brought with him when he came to UBS were his  
20 client relationships -- I think is the word that you used;  
21 right?

22 A. Yes.

23 Q. That was the intangible asset; correct?

24 A. Well, that and his ability and skills and talents  
25 and all that.



1           Q.     Of course. And then when he came to UBS, they  
2 gave him this employee forgivable loan based upon that  
3 intangible asset; right?

4           A.     Based on his proven track record of earnings.

5           Q.     That proven track record, that is where that  
6 concept of the 12 months -- 12 trailing months of business  
7 comes into play; correct?

8           A.     Probably, yes.

9           Q.     Okay. What is your understanding as to what the  
10 "12 trailing months" refers to?

11          A.     The previous one-year's period of what he earned  
12 and what he produced.

13          Q.     Okay. What he earned and what he produced. Those  
14 are kind of two different things; right?

15          A.     They relate to each other.

16          Q.     His production is the -- and you correct me, I'm  
17 sure you will -- his production is the gross amount of  
18 business that he did for the brokerage house, basically; is  
19 that correct?

20          A.     Gross amount of income that he generated for the  
21 brokerage firm.

22          Q.     And his earnings are basically what the brokerage  
23 firm then paid him, a percentage of that gross amount of  
24 earnings for the brokerage firm; right?

25          A.     Correct.

1           Q.     So based upon that 12 trailing months, the  
2 brokerage house gave him this employee forgivable loan of --  
3 I think it was 520-something-thousand dollars; right?

4           A.     Something like that. 5- to \$600,000.

5           Q.     That helps me, too. 5- to \$600,000.

6                     But there was an obligation that he kind  
7 of had to stay with the firm there for a number of years or  
8 they weren't going to forgive that loan; right?

9           A.     Yeah, it's not "kind of." That was the  
10 obligation.

11          Q.     That was the obligation. Right.

12                     So he brings this intangible asset to the  
13 brokerage house, they give him a loan based upon the  
14 intangible asset, and then he works for them for a number of  
15 years until he has satisfied his obligation under the terms  
16 of the employee forgivable loan; right?

17          A.     Right. That is an option he has. He doesn't have  
18 to stay there the entire period of time.

19          Q.     Right. He could leave, and then he would to have  
20 pay them back what he owed for the employee forgivable loan?

21          A.     That's exactly right. He would have to come out  
22 of pocket and pay the cash.

23          Q.     And he'd also forfeit some of those other  
24 compensation items that were in that package, the deferred  
25 stock benefit?

1           A.     That's correct.

2           Q.     Okay. Nowhere on the financial affidavit and the  
3 amended financial affidavit that Mr. DeMocker filed with the  
4 court did he list the intangible asset of his client  
5 relationships or the trailing 12 months of business; correct?

6           A.     Wrong.

7           Q.     Where did he list it on his financial affidavit?

8           A.     It is on his -- it is part of his income  
9 statement.

10          Q.     Part of his income statement, but it is not listed  
11 as an asset, is it?

12          A.     It is reflected as his income. It is actually the  
13 prior 12 months of earning, just like what you referred to  
14 earlier with respect to what UBS looked at. It's right on  
15 his financial statement.

16                   MR. HAMMOND: Well, Your Honor, if I can  
17 interrupt, this is why we wanted to look at the divorce file.  
18 It turns out that the document that we have is missing a last  
19 page. This might be a good time to just go ahead and  
20 substitute the complete document.

21                   MR. SEARS: Is the amended affidavit in there,  
22 122?

23                   MR. BUTNER: This is 122, and it's -- 121 is  
24 the one I am looking for.

25                   MR. HAMMOND: Your Honor, could we confer for

1 just a moment?

2 THE COURT: You may confer.

3 (Whereupon, a discussion was held off the record.)

4 MR. HAMMOND: So that the record is clear,  
5 Your Honor, the document that we have as Exhibit 121 is a  
6 complete document. We thought it was a page short. I think  
7 we were looking at the other one.

8 THE COURT: Thank you. Well, I would rather  
9 not be short a page. I'm glad you checked.

10 MR. SEARS: Somewhere a tree cries out.

11 THE COURT: You may proceed.

12 MR. BUTNER: Thank you, Judge.

13 Q. If I understand your testimony, you are saying  
14 that this intangible asset is listed as income rather than an  
15 asset; is that correct?

16 A. That's right.

17 Q. And in terms of it being listed as income, how  
18 much income is it listed as?

19 A. Well, he lists his gross pay in 2007 as \$552,000.  
20 He also includes the prior 12 months at \$388,000. So that  
21 intangible asset we have been talking about would be included  
22 in those numbers.

23 Q. Where does he list -- where does he list this on  
24 this Exhibit 121? Would you show me, please.

25 A. (Witness indicates.)

1 Q. Well, he just simply says on this that his gross  
2 pay for 2006, plus the EFL.

3 Is that what you are talking about, right  
4 there at the top, is \$388,000?

5 A. Yes.

6 Q. He doesn't list it as income for any other year  
7 other than the year in which he received it; right?

8 A. Ask that again.

9 Q. He doesn't list it as income for any other year  
10 other than the year in which he received it -- 2006; right?

11 A. 2007 is on there, as well.

12 Q. Right. He says he got 552,000 in 2007; right?

13 A. Yes. That is the income he had.

14 Q. Right. That is only income. That is not an  
15 asset; right?

16 A. It reflects the personal asset that he had with  
17 respect to his client relations and his other intangibles --  
18 the value of his intangible assets.

19 Q. You are saying as a result of those client  
20 relationships that he can make that amount of money in 2006,  
21 338, and then in 2007, he can make 552?

22 A. As I explained in my report, that is exactly where  
23 the personal asset related to client relations would appear  
24 on the financial statement.

25 Q. It is not listed on here as a personal asset,

1       though, is it?

2           A.       It is not listed that way, but that is what it is.

3           Q.       I see. In essence, it is omitted as an asset on  
4 the balance sheet; right?

5                   MR. HAMMOND: Objection, Your Honor.  
6 Argumentative.

7                   THE COURT: Overruled.

8                   You may answer.

9                   THE WITNESS: It is not included on the  
10 balance sheet of the financial statement. It is included on  
11 the income statement of the financial statement.

12 BY MR. BUTNER:

13           Q.       And you say that because he described as having  
14 made \$338,000 in 2007.

15           A.       I say that because he is accurately portraying the  
16 income generated in '06.

17                   And probably more importantly and for  
18 purposes of that document, which is the divorce proceeding,  
19 what he made in 2007.

20           Q.       Right. He tells the Court he made -- I don't know  
21 what he made.

22                   Yeah, he tells the Court he made 338,000  
23 in 2006; he tells the Court he made 552 in 2007.

24           A.       That's right.

25           Q.       And what does he tell the Court his average net

1 monthly cash flow is, on this financial statement?

2 A. He indicates it is a negative \$17,000.

3 Q. Minus \$17,204 every single month; right?

4 A. That's the average monthly cash flow, according to  
5 the statement.

6 Q. He is running a \$17,000-a-month negative?

7 A. Based on, I believe, looking at the last 24 months  
8 of earnings.

9 Q. For the previous 24 months, he averaged minus  
10 \$17,000 per month?

11 A. That is what that document suggests.

12 Q. And he swore to that under oath and filed it with  
13 the court.

14 A. Yes.

15 THE COURT: As of the date of?

16 THE WITNESS: January 2008.

17 THE COURT: Thank you.

18 BY MR. BUTNER:

19 Q. And that is after he had the best year he ever  
20 had, in terms of production and earnings?

21 A. Yes. Had he showed this just based on 2007, it  
22 would have been a lower number.

23 Q. Now, you were testifying about what happens when  
24 one party to a divorce who is ordered to pay alimony files  
25 their income tax return and claims that they paid more

1 alimony than the party who is supposed to be receiving the  
2 alimony claims they received when they filed their income tax  
3 return; right?

4 A. I remember that discussion, yes.

5 Q. And you indicated that basically that is going to  
6 result in notice from the IRS that we have noted a  
7 discrepancy here; right?

8 A. That is a pretty good chance that is going to  
9 happen.

10 Q. Okay. And then also likely it is going to result  
11 in an audit by the IRS; correct?

12 A. I wouldn't say likely. It is going to result in  
13 the IRS wanting to have supporting records for that  
14 particular line item. That is not necessarily an audit. It  
15 is just you have to produce the records to support the  
16 number. That may solve the issue, and if it doesn't solve  
17 the issue, the IRS may take additional steps.

18 Q. You were provided, in performing your analysis and  
19 formulating your opinions, various documents provided by  
20 either Mr. Sears' office or the law firm of Osborn Maledon;  
21 is that correct?

22 A. Yes.

23 Q. Let me show you what's been marked as Exhibit 156.

24 MR. BUTNER: Judge, I think this is already in  
25 evidence. This is Exhibit 78 from the Simpson hearing. I



1 think the Court has already taken judicial notice of the  
2 testimony of Cynthia Wallace in this regard.

3 THE COURT: All right.

4 BY MR. BUTNER:

5 Q. And let me show you this Exhibit 156.

6 Were you provided a document that looked  
7 anything like that?

8 A. I know I have seen the typed portion on an e-mail,  
9 I believe, or an attachment to an e-mail. What I am trying  
10 to recall is if I have seen the handwritten notations on the  
11 document. I just can't recall if I have seen that before.

12 But I have seen the original part of this  
13 document, which is typewritten.

14 MR. BUTNER: I'm going to move for the  
15 admission of 156 at this time, Judge, so that can I proceed  
16 with questioning the witness about that.

17 MR. HAMMOND: Your Honor, I don't have a  
18 recollection of what was in the transcript, and I wasn't here  
19 at the time. But I don't believe that foundation was laid as  
20 to whose handwriting that was.

21 Looks to me like it could be possibly  
22 even two people's handwriting. And I would object on  
23 foundational grounds, unless the State can show me that, in  
24 fact, the authenticity of the handwriting was established at  
25 the Simpson hearing.

1 MR. BUTNER: Judge, let me refer --

2 THE COURT: If it is already admitted in the  
3 Simpson hearing and to the extent that I took judicial notice  
4 of testimony in that hearing, I am going to overrule that  
5 objection.

6 MR. HAMMOND: If it is offered, though, today  
7 for a different purpose, if it is offered to prove anything  
8 with respect to the handwriting.

9 THE COURT: We will cross that bridge when we  
10 come to it.

11 MR. BUTNER: It is. We are at that bridge,  
12 Judge.

13 THE COURT: Okay.

14 MR. BUTNER: We might as well try and cross it  
15 now, and what I would like to do is read from the testimony  
16 of Cynthia Wallace at this point in time, because I think  
17 that that will assist in laying a foundation and will also  
18 assist the witness when I ask him questions.

19 THE COURT: Then I won't rule on the  
20 admissibility of 156 until you have done that.

21 MR. BUTNER: Okay. Beginning on Page 4, this  
22 is the testimony of Cynthia Wallace, and she's already stated  
23 her name. And I go down to line 18.

24 Gentlemen, do you have a copy of the  
25 transcript?

1 MR. SEARS: I do.

2 MR. BUTNER: Page 4, line 18.

3 Question: "Okay. Did you have occasion  
4 to meet Virginia Carol Kennedy?"

5 Answer: "Yes, I did."

6 Question: "How did you meet her?"

7 Answer: "She called my office for an  
8 appointment to get an extension on her 2007 income tax  
9 returns, and she came into the office on April the 10th of  
10 last year."

11 Question: "2008?"

12 Answer: "2008."

13 Question: "When she came into your  
14 office, did she tell you why she was there?"

15 Answer: "Well, Steven DeMocker had  
16 already filed his income tax returns, and she brought a copy  
17 of that with her. And she was upset about the amount of  
18 alimony he had claimed on his return. And even though his  
19 accountant had offered to do her income tax return, she did  
20 not feel comfortable with that."

21 Question: "Did she say why?"

22 Answer: "Well, she felt it was unethical  
23 for him to do it and, you know, she didn't agree with what he  
24 put on Steven's return."

25 Question: "Okay. Did she say why she

1 didn't agree with the income tax return?"

2 Answer: "Just the alimony as -- was --  
3 she did not feel the amount of alimony on his income return  
4 was the amount of alimony she should have to claim on her  
5 own."

6 Question: "Describe Ms. Kennedy's  
7 demeanor as she was talking with you about this."

8 Answer: "Well, she was very upset,  
9 because the potential tax liability -- if she had to claim  
10 the income tax on her return that he had claimed, she would  
11 have owed quite a little bit in income tax, which she  
12 indicated she did not have."

13 Question: "Did she express any other  
14 concerns about her tax liability?"

15 Answer: "With that one was the tax  
16 liability if she had claimed -- I had to claim the amount of  
17 alimony on his, would have been -- I might have to look at my  
18 document here, because I did put that figure on here. It  
19 would have been \$17,000 to the State and the federal if she  
20 would have had to claim that on her income tax return."

21 Question: "You said she appeared upset.  
22 Who was she upset about?"

23 Answer: "She was upset at everybody, but  
24 mostly at that time with Steve DeMocker and his accountant."

25 Question: "Okay. Did she say she was

1 going -- what did she say she was going to do about this tax  
2 return?"

3 Answer: "Well, she actually had handed  
4 me information from a couple of backups to his income tax  
5 return showing what he had outlined or his accountant had  
6 once outlined as the breakdown on the alimony, which she did  
7 not feel that, you know, even though some of it was to her  
8 benefit, she didn't feel like she owed it. She just felt  
9 overall that one of the documents that she brought had  
10 handwritten notes by her where she said that she thought that  
11 DeMocker was defrauding the IRS."

12 Question: "Let me show you what has been  
13 marked as Exhibit 78. Do you recognize that document?"

14 Answer: "Yes, I do."

15 Question: "Why do you recognize it?"

16 Answer: "That is the one I referred to  
17 and I presented this to your office in response to a  
18 subpoena."

19 Question: "Is this the document that  
20 Ms. Kennedy had brought in and gave to you?"

21 Answer: "This is one of them, yes."

22 Question: "And did she provide you with  
23 a copy of the document?"

24 Answer: Of this? Yes, I made a copy on  
25 my copy machine."

1 Question: "You incorporated it into her  
2 file?"

3 Answer: "Yes, I did."

4 Question: "Those files kept, created,  
5 maintained in the course and scope of daily operations of  
6 Wallace and Associates?"

7 Answer: "Yes, they are."

8 Question: "Are you custodian of records  
9 of those documents?"

10 Answer: "Yes, I am."

11 Mr. Ainley: "State moves admission of  
12 78."

13 Mr. Sears: "No objection."

14 The Court: "78 is admitted."

15 Question by Mr. Ainley: "What was it  
16 about that document that caught your eye?"

17 Answer: "Well, the fact that she was  
18 claiming that Steve was defrauding the government, and then  
19 also she says in here that she is going to report his  
20 accountant to the State Licensing Board. She verbally told  
21 me that she was going to report Steve to the IRS, although  
22 she doesn't say that in here. She didn't write that in here.  
23 She said he was defrauding the federal government."

24 Question: "Is there a note on it in  
25 Ms. Kennedy's handwriting concerning what she intended to

1 do?"

2 Answer: "Just the fact that she was  
3 reporting him to the State Licensing Bureau -- and I have to  
4 backtrack on something I said earlier. I have to apologize.  
5 From the last, probably, fourth, there was none of my  
6 handwriting was on here, which is correct. The last fourth  
7 of this -- I don't know whose handwriting it is, but it  
8 appears to be her phone calls and her appointments with me.  
9 But I don't know whose handwriting that is. It's not mine.  
10 It's not mine. I have to backtrack, maybe."

11 Question: "You said she mentioned  
12 fraud"?

13 Answer: "Yes, she did."

14 Q. So now, were you provided information as part of  
15 the things that you reviewed in preparation for your report  
16 and your opinions offered in court here today that after the  
17 date of the e-mail that you referred to as No. 14 of  
18 Exhibit 138 -- that being the date of March the 3rd,  
19 2008 -- were you ever provided information that even after  
20 that date Carol Kennedy was intending to report Steven  
21 DeMocker to the IRS for income tax fraud?

22 A. I don't recall specific documents. It wouldn't  
23 surprise me that there is information that has that kind of  
24 dialogue in it, but I have seen nothing that indicated that  
25 she was, in fact, going to do that.

1 MR. BUTNER: May I approach, Judge?

2 THE COURT: You may.

3 MR. BUTNER: Thank you.

4 Q. I am referring to Exhibit No. 156. Okay. Right  
5 there.

6 Can you read what that notation says?

7 THE COURT: 156 is still not in evidence.

8 MR. BUTNER: I move for its admission at this  
9 time.

10 MR. HAMMOND: Your Honor, with the  
11 understanding that there is a lot of handwriting on here that  
12 was not identified, I think that is what the witness  
13 testified to.

14 THE COURT: 156 is admitted.

15 MR. HAMMOND: There is no foundation for the  
16 handwriting on it.

17 THE COURT: I don't know, other than what  
18 Miss Wallace had to say at the time, that would identify that  
19 particular handwriting. She indicated it wasn't hers.

20 MR. HAMMOND: And she didn't know whose it  
21 was.

22 THE COURT: That is essentially all the  
23 information I have. It wasn't hers. It is not attributed at  
24 this point to any particular person. So until it becomes a  
25 critical issue for purposes of this case, I suppose I don't



1 have any information with regard to that, so I am not going  
2 to particularly pay attention, other than what Miss Wallace  
3 has already testified to.

4 Go ahead. 156 is admitted.

5 MR. BUTNER: Thanks, Judge.

6 THE WITNESS: Okay. Where you pointed to, you  
7 want me to read that?

8 BY MR. BUTNER:

9 Q. Where it says "Steve."

10 A. It says: "Steve defrauding fed gov and his  
11 preparer, Doug, has violated standards of your profession,  
12 and I am reporting you to State License Board."

13 MR. HAMMOND: Your Honor, that is the very  
14 part of the document that Cynthia Wallace said in the  
15 transcript that we just heard that she could not identify.

16 THE COURT: Understand.

17 MR. BUTNER: Actually, I don't think it does  
18 say that in the transcript, Judge. That is not the part.

19 The part that she says she cannot  
20 identify is the bottom part where it has some notations  
21 about Carol Kennedy -- let me show you.

22 First, she indicates there is some  
23 appointment notations down at the bottom.

24 THE COURT: All right. Miss Wallace testified  
25 to what Miss Wallace testified to, so I stand corrected,

1 based on looking at the exhibit.

2 MR. BUTNER: Thank you, Your Honor.

3 Q. Have you advised people, by the way, as an  
4 accountant in their divorces?

5 A. I have been involved in cases involving divorces.

6 Q. But have you ever advised people, as an  
7 accountant, who are engaged in a divorce, so to speak, as to  
8 how they should handle various financial matters?

9 A. I would say sometimes those kinds of issues do  
10 come up, yes.

11 Q. Going back to that Book of Business that we were  
12 talking about before -- oh, by the way, you didn't  
13 incorporate this kind of information into any of your  
14 opinions; did you?

15 A. Yes.

16 Q. Referring to 156.

17 A. Well, 156 is irrelevant, because it doesn't  
18 support the numbers that Mr. DeMocker put on his tax return.

19 But yes, I did incorporate that kind of  
20 information with respect to my report, and I mentioned that  
21 in my report.

22 Q. So you then incorporated the information in your  
23 report that Carol Kennedy was going to report Mr. DeMocker to  
24 the IRS for income tax fraud?

25 A. No, I didn't incorporate that.

1           Q.     Is that some of the stuff you deemed to be  
2 irrelevant?

3           A.     Well, on that particular document, I don't know  
4 the time frame for that.

5           Q.     Well, the time frame was set forth in the  
6 testimony that I read. It was in April of 2008. Do you  
7 recall that?

8           A.     Not the testimony, no.

9           Q.     I mentioned the date --

10                   THE COURT: If I might understand where we  
11 are; the witness testified that he did not know nor had  
12 reviewed transcripts of testimony by Cynthia Wallace.

13                   MR. BUTNER: That's correct, Judge. But the  
14 date is significant, though, in this case.

15                   THE COURT: With that as background, your next  
16 question is.

17 BY MR. BUTNER:

18           Q.     So knowing that this took place on April 10th of  
19 2008, that would be after the date of the e-mail dated  
20 March the 3rd of 2008; right?

21           A.     Yes.

22           Q.     And that is the e-mail where it sounds as if Carol  
23 Kennedy has capitulated and given in to Steve concerning the  
24 alimony payments; isn't that correct?

25           A.     Well, no. I didn't think that is the

1 characterization I would give to that. Because the important  
2 thing here is -- I agree she never capitulated in terms of  
3 her interpretation of what payments should or should not be  
4 included as alimony.

5 But I think she capitulated to -- that is  
6 your word -- but what I think she is saying there is that she  
7 can now see how -- the payments that he was referring to and  
8 that are included, for example, on the schedule that you just  
9 showed me, comes as a source point from the court order.

10 Q. I see. And yet she still thinks that Steve and  
11 his accountant are cheating the federal government; right?

12 A. Well, I understand that that is the position she  
13 is taking. But I do talk about that in my report.

14 Q. If I understood your earlier testimony, even if  
15 Mr. DeMocker had taken an assigned value for his Book of  
16 Business, so to speak, and put it on the balance sheet, that  
17 he would have a debt on the opposite side of the balance  
18 sheet, and so it would have been a wash; right?

19 A. That's right.

20 Q. Okay. Isn't it true that when you get a loan  
21 against an asset, that you have, as you gradually pay the  
22 loan off, you accrue equity in that asset?

23 A. Really? What about a car? It's not true. The  
24 car depreciates.

25 Q. Okay. That's a good point. The car depreciates.

1 A. Correct.

2 Q. Presumably, though, once you get it paid off, it  
3 is still worth something; isn't it?

4 A. Probably, yes.

5 Q. Although, the way they finance them these days, it  
6 is hardly worth anything when you get done; right?

7 A. Yes.

8 Q. So once you get it paid off, you've got this asset  
9 that you paid off; right?

10 A. Yes. Speaking of a car.

11 Q. All right. Speaking of a car.

12 Well, when Mr. DeMocker transferred from  
13 A.G. Edwards to UBS, he got those employee forgivable loans;  
14 right?

15 A. Right.

16 Q. And the basis for him getting those employee  
17 forgivable loans was his intangible asset of his client  
18 relationships and his ability, so to speak; right?

19 A. Based on his earnings.

20 Q. Based on his earnings; right?

21 A. That's correct.

22 Q. And once the employee forgivable loans were  
23 forgiven, so to speak, Mr. DeMocker still had all of those  
24 client relationships and all of those abilities; right?

25 A. Well, I don't know if he had the same client

1 relationships he had before. He still had his abilities, and  
2 he still had whatever particular client relations he had at  
3 the time.

4 Q. Right. You don't know if they are exactly the  
5 same, do you?

6 A. No, I don't.

7 Q. But presumably, the way that this system works, is  
8 the employee forgivable loans are based on the employee --  
9 Mr. DeMocker, right? -- coming over from the place he used to  
10 work, and gradually all of those client relationships or a  
11 substantial percentage of them come over to his new place.  
12 Isn't that the assumption in that agreement?

13 A. I think that is the hope, yes.

14 Q. And that is why they want him to stay there for a  
15 period of time -- I think it was five years, as outlined in  
16 the -- what was it, the letter of understanding between UBS  
17 and Mr. DeMocker?

18 A. Yes.

19 Q. So that he could get all of those client  
20 relationships or the majority of them transferred over to  
21 UBS, and so that he would also get those assets that he had  
22 management over -- the substantial percentage of those assets  
23 that he managed for those clients also transferred over to  
24 UBS, so that then both UBS and Mr. DeMocker would be making  
25 money off of those things; right?

1 A. That is probably the hope, yes.

2 Q. And in fact, Mr. DeMocker was doing that for UBS;  
3 right?

4 A. Doing what?

5 Q. Getting those things transferred over?

6 A. He was probably trying to get his clients, the  
7 ones he had relationships with, to move their account, sure.

8 Q. You saw where he got a second employee forgivable  
9 loan; right?

10 A. Yes.

11 Q. And what was the basis for that second employee  
12 forgivable loan?

13 A. I think it was based on his performance up to that  
14 time.

15 Q. So he had sort of met the performance standards in  
16 order to get more money from UBS?

17 A. Yes.

18 MR. BUTNER: Could we take a brief recess at  
19 this time, Judge? I think we are trying to get that  
20 transcript; right?

21 THE COURT: Any issue, Mr. Hammond?

22 MR. HAMMOND: No, I don't mind. I don't know  
23 that -- we have the transcript.

24 MR. BUTNER: I thought you were going to  
25 e-mail it.

1 MR. SEARS: I think I just did.

2 MR. BUTNER: She hasn't got it.

3 MR. HAMMOND: We have no objection to a  
4 recess, Judge.

5 THE COURT: We will take a few minutes to let  
6 modern technology catch up. I wouldn't have had this issue  
7 15 or so years ago.

8 (Brief recess.)

9 THE COURT: Defendant is still present along  
10 with his three counsel and Mr. Butner for the State.

11 Mr. Butner.

12 CROSS-EXAMINATION CONTINUED

13 BY MR. BUTNER:

14 Q. Just to clarify that what we were talking about in  
15 terms of the client relationships that Mr. DeMocker had, in  
16 your report you indicate, basically, that he discloses those  
17 client relationships -- actually, he discloses the  
18 significance of the client relationships by mentioning how  
19 much income he makes from them; right?

20 A. Yes.

21 Q. And he also -- on the balance sheet, he puts the  
22 employee forgivable loans up there as loans that he still  
23 owes; right?

24 A. It is a liability that he has as of that date and  
25 time, yes.



1           Q.     But he doesn't put on the balance sheet side the  
2     intangible asset value of the client relationships.

3           A.     No, and I explained why on direct.

4           Q.     Now that financial affidavit, you talked about  
5     your Black's Law definition of fraud; right?

6           A.     Yes.

7           Q.     And the financial affidavit, that is filled out  
8     for whom?

9           A.     For the Court, I believe.

10          Q.     So actually, Carol Kennedy isn't the victim of any  
11     misrepresentation on that financial affidavit, the Court is;  
12     right?

13          A.     The victim?

14          Q.     Right. The victim of any misrepresentation. It  
15     isn't Carol Kennedy, it's the Court if there is a  
16     misrepresentation; right?

17          A.     No, I wouldn't agree with that.

18          Q.     You don't think the Court is the victim of  
19     financial misrepresentation?

20          A.     No, because the Court is not the one relying on it  
21     or damaged by it. The person that would be relying on it  
22     would be Miss Kennedy.

23          Q.     You don't think the Court relies on that financial  
24     affidavit in making judgments as to how much alimony or  
25     spousal maintenance should be paid?

1           A.     I think they are the arbitrator of the divorce  
2 proceedings. They are not damaged by what he puts on the  
3 financial statement.

4           Q.     We discussed what would happen if Ms. Kennedy were  
5 to have filed her income tax return and it didn't mirror  
6 Mr. DeMocker's, in terms of alimony; correct?

7           A.     Yes.

8           Q.     And that would have necessitated those  
9 consequences, so to speak, with the IRS?

10          A.     Potentially, yes.

11          Q.     But if she were to have gone to Mr. Raider and  
12 filed a tax return that mirrored Mr. DeMocker's tax return,  
13 presumably what would have happened?

14          A.     With respect to alimony?

15          Q.     Right.

16          A.     And the IRS?

17          Q.     Right.

18          A.     I don't think they would flag anything.

19          Q.     Wouldn't have been a problem, probably.

20          A.     I don't think so. If the numbers matched, no.

21          Q.     You basically concluded the parties simply had a  
22 vastly different view of what should be included as alimony?

23          A.     That's right. That is what I think.

24          Q.     And I think in your testimony you stated -- you  
25 thought that at some point they would simply have to resolve

1 it. They would have to get together on that issue, I think  
2 was what you said; right?

3 A. Well, I think you are now referring to the  
4 testimony with respect to the July 2 e-mail -- the July 1,  
5 July 2 e-mail on that 8,000 and the 6,000.

6 Q. On the QDRO; right?

7 A. Right. On the alimony issue -- no, she could file  
8 a repeating return, and then the IRS could get in the middle  
9 of it.

10 Q. Well, in regard to the QDRO, they could end up  
11 just going back into court; right?

12 A. I could see that as a potential way to try to  
13 solve it -- maybe get a mediator, an arbitrator to look at  
14 that issue and make a determination. That happens all the  
15 time. Binding arbitration.

16 Q. By the way, you are not a certified fraud  
17 examiner; is that correct?

18 A. No, I am not.

19 Q. Do you know what is required to become a certified  
20 fraud examiner?

21 A. I think you have to file an application, and I  
22 believe there is a test for that certification.

23 Q. But you did join the association, so to speak?

24 A. I did, because I do a lot of work in that area, so  
25 I like to keep up on the latest developments with respect to

1 fraud examinations.

2 MR. BUTNER: Could I have just a moment,  
3 Judge? We have the e-mail here, and I am trying to take a  
4 look at it.

5 THE COURT: You may.

6 MR. BUTNER: I have no further questions of  
7 this witness at this time.

8 THE WITNESS: Thank you.

9 THE COURT: Redirect, Mr. Hammond?

10 MR. HAMMOND: Very briefly.

11 REDIRECT EXAMINATION

12 BY MR. HAMMOND:

13 Q. Mr. Curry, I am infatuated with this Cynthia  
14 Wallace thing. I want to ask you a few questions about it.

15 Do you still have Exhibit 156 up there?

16 A. No, I don't.

17 MR. HAMMOND: May I approach again, Your  
18 Honor?

19 THE COURT: Yes, please.

20 BY MR. HAMMOND:

21 Q. First of all, you have read Mr. Echols' materials  
22 here -- his report and his testimony? Do you know if  
23 Mr. Echols purported to rely on Cynthia Wallace?

24 MR. BUTNER: Objection. Speculation.

25 Hearsay. I mean, he is asking him what Mr. Echols tried to

1       rely on?

2                   MR. HAMMOND: I am asking what he testified  
3       to.

4                   THE COURT: Overruled.

5                   THE WITNESS: I don't recall what he testified  
6       to with respect to that, Mr. Hammond. I'm sorry.

7                   MR. HAMMOND: Okay.

8           Q.       Do you know whether -- I am interested in this  
9       line down toward the bottom of the page that said "Steve  
10      defrauded fed government and his" -- looks like it could be  
11      "preparer." And says "Doug has violated standards of your  
12      profession, and I am reporting you to the State Licensing  
13      Board."

14                               Do you see that?

15           A.       Yes.

16           Q.       First of all, do you know whether Ms. Kennedy ever  
17      reported Doug Raider to the State Accountancy Board?

18           A.       I am not aware if she did.

19           Q.       Do you know whether she ever reported Steve to any  
20      licensing agency or any government agency -- Steve DeMocker?

21           A.       Not that I am aware of, no.

22                   MR. HAMMOND: Your Honor, since we are relying  
23      on the transcript that we have in electronic format, there  
24      are a couple of other portions of Ms. Wallace's testimony  
25      that address directly the question of what advice she gave

1 Carol Kennedy. It's in the transcript that you all already  
2 have, but can I either have Miss Chapman read it into the  
3 record, or I can try to read it myself, but I am not very  
4 good at manipulating this particular computer.

5 Do you happen to have the entire  
6 transcript?

7 MR. BUTNER: Do you want to use mine?

8 MR. HAMMOND: Maybe I could use yours.

9 MR. BUTNER: Of course.

10 BY MR. HAMMOND:

11 Q. These are questions by Mr. Sears, I believe, to  
12 Miss Wallace at the hearing that you heard some questions and  
13 answers from on cross-examination.

14 "Now, in terms of your understanding of  
15 fraud, I assume you understand that there's" --

16 MR. BUTNER: Excuse me. Page, please?

17 MR. HAMMOND: I'm sorry. Page 29. Would you  
18 like to read along with me?

19 MR. BUTNER: That is okay. I just want to  
20 know where it is so that I can find it.

21 MR. HAMMOND: It's -- I'm beginning at Line 17  
22 on Page 29.

23 MR. BUTNER: Thank you.

24 MR. HAMMOND: "Now in terms of your  
25 understanding of fraud, I assume you understand that there

1 is -- in the world of taxes, there is criminal fraud and  
2 civil fraud, and that is a possible consequence of some  
3 taxpayers' conduct."

4 Answer: "That's correct."

5 Question: "There is nothing about this  
6 alimony dispute, is there, that has anything to do whatsoever  
7 with either civil or criminal fraud, in your opinion;  
8 correct?"

9 Answer: "Not when it was based on the  
10 information that they based it on."

11 Question: "It is a dispute between  
12 divorcing people. That is not uncommon; correct?"

13 Answer: "Right. That is correct, and  
14 sometimes just a difference of opinion between preparers."

15 Question: "Steve has a certified public  
16 accountant that is telling him to do so. You, as an enrolled  
17 agent, get a brief heads up from a CPA down the hall that  
18 maybe that is not right."

19 And then she goes on to say -- and this  
20 is now line 10 -- "Well, if I may interject here, enrolled  
21 agents are actually enrolled with the IRS, and as part of  
22 that, I have 24 hours of advanced tax law every year and  
23 other continuing education requirements. I do know as much  
24 as a CPA. I just took it to the CPA next door just to verify  
25 that based on the information that I had that I discussed

1 with him, that I was correct. It wasn't to consult with him  
2 on what to do or what not to do. It was -- I am correct in  
3 this? Right."

4 And then the question: "I'm sorry if I  
5 gave you the wrong impression.

6 And then she goes on to say: "I am just  
7 trying to give you the sequence of this."

8 Q. Let me stop here and ask you: In the materials  
9 that you have seen, do you have any basis for disagreeing  
10 with Miss Wallace's statement that based upon what she saw,  
11 there was no fraud here?

12 A. No. I think we are looking at the same thing.

13 Q. There is a little bit later -- I think, around  
14 Page 41 --

15 Do you know whether Mr. DeMocker was ever  
16 informed that Carol Kennedy had expressed an opinion to  
17 Cynthia Wallace in April that she thought there was fraud  
18 that should be reported to the government?

19 A. I have not seen anything that would suggest that.

20 MR. HAMMOND: In the same transcript -- now we  
21 are on Page 22 -- there is the following questions and  
22 answers. Beginning -- I think we can start at Line 7.

23 "Okay. Let's go back to you telling her  
24 about getting a tax attorney. Did you tell her anything  
25 about letting Mr. DeMocker know about her getting a tax



1 attorney to prepare her tax returns?"

2 Answer: "No, I felt it was better -- I  
3 told her I thought it was better she did not mention it to  
4 him."

5 Mr. Sears asks why.

6 She says: "I don't know. Just my  
7 instincts maybe. I just had a feeling that it wasn't a good  
8 idea."

9 Q. Do you think, sir, that a rational person advising  
10 a taxpayer might come to the same conclusion that it would  
11 not be a good idea to raise with the taxing authorities a  
12 question that might be highly debatable?

13 A. Yes.

14 Q. Now you talked about the things that might happen  
15 if you were to have a difference in the alimony deductions  
16 claimed on two competing returns; right?

17 A. Right.

18 Q. You talked about that on cross-examination with  
19 Mr. Butner.

20 A. Yes.

21 Q. One option is that you both might wind up having  
22 conversation -- if those numbers are different, you both  
23 might wind of having conversations with the IRS, and in this  
24 case, Mr. DeMocker might win.

25 A. That is possible. Sure.

1           Q.     Somehow, it seems to me that within our  
2     conversations maybe there has been an assumption that maybe  
3     the only options were that the IRS would do nothing or make  
4     an adjustment in Mr. DeMocker's return. You weren't  
5     suggesting anything of that sort, were you?

6           A.     No.

7           Q.     You have looked at the financial affidavit that  
8     was filed here, and Mr. Butner asked you questions about it  
9     on cross.

10                         Did you find anything in that financial  
11     statement that you could say is fraud by Mr. DeMocker?

12          A.     No.

13          Q.     We have talked, maybe endlessly, about the  
14     treatment of the Book of Business, and I am not going to  
15     belabor it, but I want to be sure that we have your very best  
16     understanding of, first of all, was it appropriate for  
17     Mr. DeMocker not to include as an asset -- and I put the word  
18     in quotes -- in a balance sheet, his income from his  
19     business?

20          A.     No. It would not be appropriate, in my opinion.

21          Q.     It would not be appropriate to put it in there?

22          A.     That's correct.

23          Q.     Where should it be?

24          A.     On the income statement.

25          Q.     And where was it?

1           A.     On the income statement.

2           Q.     One more moment on this, and I promise I will  
3 never ask you about this again, until we get to some other  
4 form of hearing.

5                     If you were seeking a loan -- you,  
6 Mr. Greg Curry -- and you went to a bank and asked the bank  
7 to loan you money, might it be possible that the bank would  
8 say to you "fill out a balance sheet"?

9           A.     It is very possible.

10          Q.     Indeed, almost a certainty, wouldn't you say?

11          A.     Yes.

12          Q.     And if you filled out a balance sheet, would you  
13 put on it your income?

14          A.     On my balance sheet?

15          Q.     Yes.

16          A.     No. I would put it on the income statement.

17          Q.     And you might very well be asked for an income  
18 statement as part of your application.

19          A.     Right.

20          Q.     Because they want to know what kind of future you  
21 have, what kind of income you have, what your history has  
22 been. Those are all things important to a lender.

23          A.     Sure.

24          Q.     And you would disclose that.

25          A.     Sure.

1           Q.     If you didn't disclose them or if you inflated  
2 them, you might have a problem.

3           A.     True.

4           Q.     But if you disclosed them accurately, you would be  
5 doing precisely what the law requires; is that right?

6           A.     I think so.

7           Q.     I know we have said here, both in your testimony  
8 and during the testimony of Mr. Echols, that there are  
9 debatable points, and that the debatable points were well  
10 known to both sides. And remember I asked you this morning  
11 some questions about the debatability of those points and how  
12 both sides had accountants? Do you remember that?

13          A.     Yeah.

14          Q.     Both sides had lawyers?

15          A.     Yes.

16          Q.     Let me ask you about this. Is this question, the  
17 question of the proper treatment of the so-called Book of  
18 Business, do you regard this as a legitimately debatable  
19 point?

20          A.     Whether it should be put on a personal balance  
21 sheet?

22          Q.     Yes.

23          A.     No, I don't think --

24          Q.     Is it debatable -- I don't want to cut you off,  
25 but is it debatable that if you filed a balance sheet that

1 did not include your so-called Book of Business, that you  
2 would be -- you would be engaging in fraud?

3 A. No. Not in my opinion.

4 Q. I don't want to kill this, but you're in a  
5 profession with a lot of people, and you deal with  
6 professionals all the time. You are dealing with people who  
7 are valuing their businesses and their income streams very  
8 regularly; isn't that fair?

9 A. Sure. Yeah.

10 Q. Are there people that you encounter who would say  
11 the opposite? Who would say wait a minute, your balance  
12 sheet is false if you don't put in the asset column your  
13 income or your expectancy of future income?

14 A. Well, I wouldn't think so. There certainly are  
15 people who would argue that some form of good will can be an  
16 asset, that it can be argued about in a divorce proceeding,  
17 and that is exactly what happened in Mr. DeMocker's case.  
18 They did debate it. They did argue about what was the value  
19 and how should it be handled and those kind of things.

20 But from the accounting standpoint of  
21 placing it on a balance sheet and arguing that it is a proper  
22 asset on a balance sheet -- this being customer relations and  
23 other kinds of skill-related or talent-related personal  
24 assets of an individual -- no. I think that is entirely  
25 wrong, and I don't think there is any support in any kind of

1 accounting literature for that.

2 Q. Okay. I want to take you back briefly, now, to  
3 the topic of Mr. DeMocker's financial situation as of July 2,  
4 2008, that you have been asked some questions about. Let me  
5 do it looking at January 1, 2008, and July 2, 2008.

6 Do you have an opinion with respect to  
7 whether Mr. DeMocker was worse off on the more recent date  
8 than he was in January of 2008?

9 A. I do have an opinion on that topic, yes.

10 Q. What is your opinion?

11 MR. BUTNER: Objection. This is improper  
12 redirect, Judge. This is brand new stuff, so to speak. It  
13 wasn't touched upon in cross. He is just starting a new  
14 thing. And I have sat here for a while, but --

15 MR. HAMMOND: Your Honor, what was touched on  
16 cross is the continuing theme that it was a result of  
17 Mr. DeMocker's worsening financial condition that a horrible  
18 homicide occurred here.

19 THE COURT: Objection is overruled.

20 BY MR. HAMMOND:

21 Q. What is your opinion with respect to whether  
22 Mr. DeMocker's financial condition was worse in July of 2008?

23 A. I don't think it was.

24 Q. You do not think it was worse in July than  
25 January?

1           A.     That's correct.

2           Q.     Please tell us why.

3           A.     The basis for that opinion are the things that I  
4 did talk about on direct -- the fact that he had cash in the  
5 bank to meet obligations -- certainly over \$9,000 in cash.

6                     The fact that his debts to lenders --  
7 credit card debts to third-party lenders had gone down as of  
8 July 2 from January 1st. He didn't have any obligations on  
9 the Bank of America credit card; he didn't have any  
10 obligations on the Chase credit card -- not to the tune of  
11 \$30,000. His UBS credit card was \$20,000 less. Those are  
12 significant reductions in debts owed to third-party lenders  
13 that could potentially come after him if debts don't get paid  
14 off.

15                    He had \$20,000 in cash coming to him from  
16 his wife's QDRO. So that would be money he would have  
17 available to him to meet various obligations.

18                    And the fact that as of July 2, he is  
19 going into one of the better months for him, in terms of  
20 compensation.

21           Q.     Explain that. Why is July going to be a month in  
22 which his compensation is going to be better?

23           A.     If you look at his historic compensation, you will  
24 see that it spikes every three months -- April, July,  
25 October, January -- in all the years going back. The reason

1 it does that is because he is getting paid based on the  
2 brokerage firm getting paid from mutual funds, where some of  
3 the assets that he puts his clients into are invested, and  
4 those tend to pay off in those particular quarters. So you  
5 can almost look like clockwork to tell that in those four  
6 months, his compensation will go up dramatically, a lot more  
7 so than in other months.

8 So he was at a point in time, July 2nd,  
9 where he is in one of the months where he is going to be  
10 receiving the higher amount of compensation compared to other  
11 months. So based on all of those factors is why I conclude  
12 that as of July 2nd he was not in a distressed financial  
13 situation.

14 Q. The State has argued, and you have had  
15 questions, about whether Mr. DeMocker was unable to meet his  
16 financial obligations as of July the 2nd. I take it from  
17 what you've said already before that you have an opinion with  
18 respect to whether he could meet his financial obligations as  
19 of July 2nd.

20 A. Well, I think the specific question on  
21 cross-examination was could he make the alimony payment.

22 Q. And could he?

23 A. Yes.

24 Q. Could he make the other obligations? Did he have  
25 a reasonable basis for believing that he could handle his



1 other financial obligations as of the 2nd of July, 2008?

2 A. Well, based on the things that I have mentioned to  
3 you, the cash that was coming in, the compensation for the  
4 month, and based on his history of being able to meet those  
5 obligations one way or the other, whether by deferment or by  
6 use of credit cards, the answer would be yes.

7 MR. HAMMOND: Thank you. I have no further  
8 questions.

9 THE WITNESS: Thanks.

10 THE COURT: Could you round me through the EFL  
11 one more time.

12 If in the position which Mr. DeMocker was  
13 when he joined UBS -- 2004, I think it was -- about five  
14 years' expectancy of work in the future in exchange for  
15 500,000-plus dollars, if he is at that time filling out a  
16 financial affidavit, he would show the \$600,000 or 5-,  
17 whatever it was -- 550 in round figures -- as cash on hand  
18 against the liability of the EFL?

19 THE WITNESS: Yeah, if you are looking at Day  
20 One? On the first day he starts working for UBS? Exactly.  
21 He now has 600-some thousand dollars of cash. He can put it  
22 in the bank. And he has got this liability for the same  
23 \$600,000. If he quits the next day, the cash goes from the  
24 bank back to UBS.

25 THE COURT: Just using round figures, he

1 received forgiveness of \$100,000 after 12 months the next  
2 year. If he was filling out the same financial statement, he  
3 would actually show the hundred thousand as income?

4 THE WITNESS: That's right.

5 THE COURT: The loan now at \$450,000?

6 THE WITNESS: 500.

7 THE COURT: Or whatever it was.

8 THE WITNESS: Right.

9 THE COURT: I think I am following. So you  
10 are disagreeing with the concept that Mr. Echols had of when  
11 it got around to the actual financial affidavit that was  
12 prepared -- I believe Mr. Echols testified that in his  
13 opinion Mr. DeMocker should have been showing -- could have  
14 justly been showing the liability of the loan, the EFL, but  
15 in his opinion he should show an equivalent amount  
16 potentially on the asset side for the asset that he would  
17 receive if he fulfilled his obligations to UBS. And you are  
18 disagreeing with that?

19 THE WITNESS: Yes. Absolutely. As an  
20 example, if you and I went to the bank and borrowed \$100,000  
21 in cash on Day One, and we filed a financial statement, we  
22 would show the 100,000 in cash and we would show the 100,000  
23 in liability. Let's say during the next month or so we go  
24 out and spend it -- foolishly -- but we spend all of the  
25 hundred thousand dollars.

1 THE COURT: That never happens nowadays.

2 THE WITNESS: No. Never. But what we would  
3 show on our financial statement would be a liability of a  
4 hundred thousand. That didn't change. We still owe the  
5 bank.

6 But what would we have as an asset? We  
7 would have zero.

8 So the concept that because there is a  
9 liability there must be an asset is false, because that  
10 example proves it. Because what happened is basically you  
11 now have a net equity of negative a hundred thousand dollars.

12 THE COURT: Your analysis had to do only with,  
13 essentially, cash on hand. The numbers that were provided  
14 through Mr. Echols, you didn't go back and do some whole  
15 cloth, new analysis yourself of what Mr. DeMocker's income  
16 and expenditures were?

17 THE WITNESS: No, I did not.

18 THE COURT: You simply relied on what the  
19 State's expert already had done?

20 THE WITNESS: Yes. And if you are talking  
21 about what I diagrammed, that would be the case, yes, I used  
22 his numbers.

23 THE COURT: In terms of looking at financial  
24 position, insurance is not taken into account in any of these  
25 amounts?

1 THE WITNESS: That's correct.

2 THE COURT: Follow-up questions to mine? It  
3 was your witness.

4 MR. HAMMOND: Your Honor, I have no questions  
5 with respect to the questions you just asked.

6 THE COURT: Mr. Butner?

7 FOLLOW-UP QUESTIONS

8 BY MR. BUTNER:

9 Q. You used the example of getting a loan from the  
10 bank based upon your balance statement, right, and getting  
11 this \$100,000 loan, and you got \$100,000 cash; right?

12 A. Yes.

13 Q. So you have that loan as a liability, and you have  
14 the cash as the asset; right?

15 A. That's right.

16 Q. And if you take the cash and you use it to buy  
17 something rather than just spend it, so to speak, on living  
18 expenses --

19 THE COURT: High living.

20 BY MR. BUTNER:

21 Q. High living -- wine, women, and song, and the rest  
22 you just waste, right? You just will dissipate that  
23 \$100,000. You don't have an asset; right?

24 A. If you dissipate it, yeah, you don't have an  
25 asset.

1           Q.     But if you buy something with it, you have an  
2     asset, and that you put on the other side of the balance  
3     sheet.

4                     For example, you take \$100,000 and you  
5     buy a house; right? And you have the house as the asset, and  
6     you have the debt as the liability; right?

7           A.     I agree with you.

8           Q.     And in Mr. DeMocker's case, he got the \$500,000  
9     loan, so to speak -- the EFL from UBS; right?

10          A.     Yes.

11          Q.     And he spent all the cash; right?

12          A.     Yes.

13          Q.     But he still had the basis for the loan, didn't  
14     he -- his talents and his client relationships?

15          A.     Yes, but he doesn't get anymore cash from it.

16          Q.     And that is an intangible asset with a value  
17     equivalent to what the loan was; isn't that correct?

18          A.     Well, to be able to get that loan again, and to  
19     generate that asset, he would to have be subjected to a  
20     different loan.

21          Q.     Like if he were to go down the street to another  
22     brokerage house where they might write him a check for a  
23     million dollars?

24          A.     If he went down and was hired by a competing firm,  
25     yes, he would subjected to an additional loan.

1 MR. BUTNER: Thank you. No further questions.

2 THE COURT: Anything else, Mr. Hammond?

3 MR. HAMMOND: Not from this witness, Your  
4 Honor, but one thing you talked about this morning. You said  
5 you would strike anything in Mr. Echols' testimony that  
6 constituted an opinion to the motive of Steve DeMocker. The  
7 report itself has, as its penultimate paragraph on Page 4 the  
8 following two sentences:

9 "We feel that the facts presented show a  
10 significant motive for Mr. DeMocker to want to prevent Carol  
11 Kennedy from taking him back to court. His exposure to  
12 conviction is great and the resultant consequences are  
13 disastrous."

14 THE COURT: Those are judgments that I think I  
15 am called upon to make and conclusions that I am called upon  
16 to make. And so to the extent that the experts in the field  
17 are talking about their areas of expertise, I will gladly  
18 hear the testimony. But to the extent that they are invading  
19 the province that I am supposed to be deciding at this type  
20 of hearing, I am going to ignore those. So I will not  
21 physically strike that, but I will ignore those, and as far  
22 as the record is concerned, the record can reflect that I am  
23 striking it.

24 Does that satisfy the record as far as  
25 you are concerned, Mr. Sears and Mr. Butner?

1 MR. BUTNER: Judge, it doesn't bother me if  
2 you just want to strike it from the report. That should  
3 satisfy counsel.

4 MR. HAMMOND: But there may be some other  
5 things in the transcript that we will want to bring to the  
6 Court's attention, but we can do that tomorrow.

7 THE COURT: The same thing holds true if they  
8 offer opinions about what I ought to do in terms of findings.  
9 They are entitled to their opinions, they can keep them, and  
10 no offense intended, but I am not going to rely on opinions  
11 with regard to that ultimate question. I think that is not  
12 fair game for an expert opinion for purposes of this type of  
13 hearing.

14 MR. SEARS: I think that was Exhibit 20 that  
15 Mr. Hammond was reading from, Your Honor.

16 THE COURT: Thank you.

17 Any reason to keep Mr. Curry under his  
18 subpoena?

19 MR. HAMMOND: No, Your Honor.

20 THE COURT: Mr. Butner?

21 MR. BUTNER: No, Your Honor.

22 THE COURT: You are excused, Mr. Curry. Thank  
23 you.

24 THE WITNESS: Thank you, Your Honor.

25 THE COURT: I don't know if you had any

1 exhibits left over there.

2 THE WITNESS: I gave them to the bailiff.

3 THE COURT: Thank you. You all did not offer,  
4 and I have not admitted this report, Exhibit 155. Do you  
5 want to leave the status quo?

6 MR. HAMMOND: No, I would like, as was done  
7 with Mr. Echols, subject to the limitation -- and I don't  
8 think it applies to his report -- but I would move its  
9 admission.

10 THE COURT: Any objection to 155, Mr. Butner?

11 MR. BUTNER: No.

12 THE COURT: 155 is admitted.

13 Similarly, as the bailiff points out, we  
14 have the chart here. That was illustrative, but do you see  
15 any need to keep that?

16 MR. HAMMOND: I actually asked Mr. Sears, over  
17 the lunch hour, what the convention was in matters up here.  
18 I would typically ask that it be marked, so that it's in the  
19 record, and I think that would be my preferred course to just  
20 have it marked for illustrative purposes.

21 MR. BUTNER: I certainly have no objection  
22 that it be marked, and I ask it be admitted.

23 THE COURT: The next number is 157. The  
24 numbers that were placed up there by Mr. Curry, that chart is  
25 marked as Exhibit 157 as admitted for illustrative purposes.



1 Other witnesses, Mr. Hammond or  
2 Mr. Sears?

3 MR. SEARS: No, Your Honor.

4 THE COURT: Mr. Butner?

5 MR. BUTNER: None from the State, Judge.

6 THE COURT: Both sides have rested, then, in  
7 the probable cause hearing; is that correct?

8 MR. SEARS: Yes, Your Honor.

9 MR. BUTNER: That's correct.

10 THE COURT: Then my understanding was that in  
11 our discussion you wanted to break early this afternoon, come  
12 back for argument on what you believe as a final summation  
13 has occurred in the course of the hearing and what you would  
14 want the Court to do. And also, I think, Mr. Sears, you  
15 wanted to address some concluding remarks concerning my  
16 under-advisement matter, as well.

17 MR. SEARS: Yes, Your Honor.

18 THE COURT: So we will adjourn for today and  
19 resume tomorrow at 2:00 p.m.

20 MR. SEARS: Thank you.

21 MR. BUTNER: Nothing further from the State,  
22 Judge. Thank you.

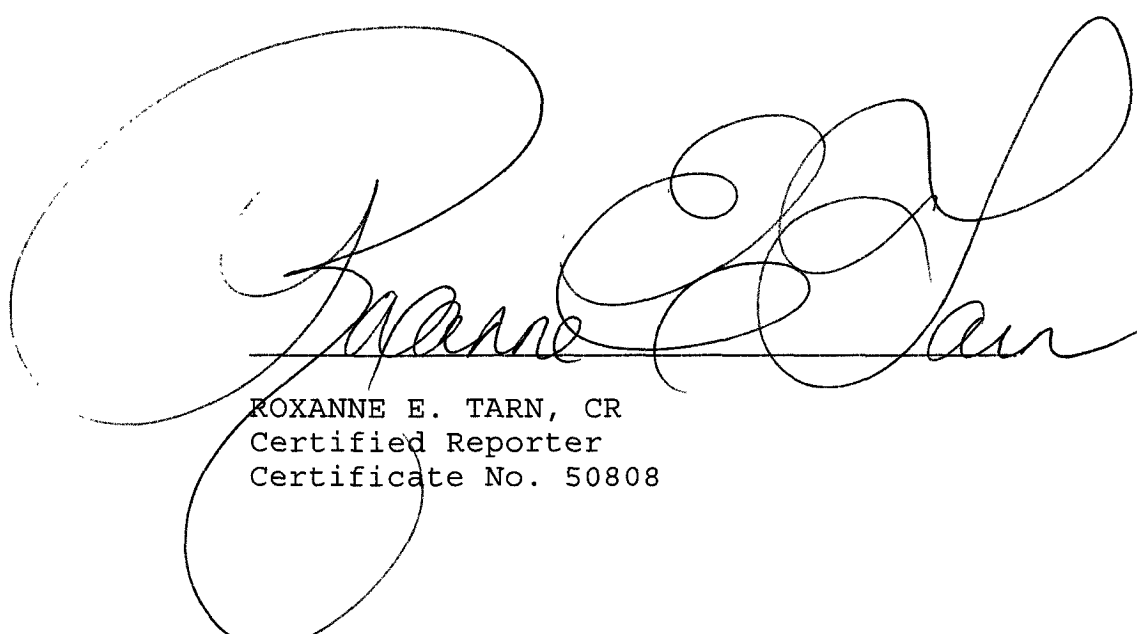
23 THE COURT: Stand in recess.

24 (Whereupon, at 2:14 p.m. the case was adjourned  
25 to resume at 2:00 p.m. on November 20, 2009.)

C E R T I F I C A T E

I, ROXANNE E. TARN, CR, a Certified Reporter  
in the State of Arizona, do hereby certify that the foregoing  
pages 1 - 145 constitute a full, true, and accurate  
transcript of the proceedings had in the foregoing matter,  
all done to the best of my skill and ability.

SIGNED and dated this 9th day of January,  
2010.



ROXANNE E. TARN, CR  
Certified Reporter  
Certificate No. 50808